No. 19-36020

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOHN DOE #1 *et al.*,

Plaintiffs-Appellees,

v.

DONALD TRUMP *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Oregon

Opposition to Defendants-Appellants' Urgent Motion Under Circuit Rule 27-3(b) for a Stay Pending Appeal

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INTRODUCTION

The Proclamation in this case is unlike any this Court has considered before. It bars entry of lawful immigrants who cannot prove they will be covered by "approved" health insurance within 30 days, or have the financial resources to cover "foreseeable healthcare costs." The President's new single-factor test for who will "financially burden the United States" overrides Congress's multi-factor public charge test, and undermines congressional efforts to promote quality healthcare insurance for newly-arrived immigrants.

Enforcement of the Proclamation would cause a sweeping change to the immigration system. The Proclamation is expected to affect up to 60 percent of immigrants who meet all other admission requirements. The sole reason for the upheaval is the President's purported concern about the impact of uncompensated care costs on taxpayers and the domestic healthcare system. The Proclamation estimates those total costs at $35 billion each year. It does not mention that uninsured recent immigrants account for less than 0.06 percent of all medical expenditures in the United States. Nor does it acknowledge that insurance plans it deems "approved" are largely unavailable to intending immigrants abroad, or do not meet the statutory standards for minimum essential coverage.

The Constitution does not permit this unilateral executive action. Article I reserves to Congress the power to make immigration law and to spend taxpayer

money for the public welfare. In the Immigration and Nationality Act ("INA"), the Affordable Care Act ("ACA"), and other statutes, Congress exercised that power to address the same issues the Proclamation purports to address. Because the Proclamation contravenes express Congressional will, it cannot survive Plaintiffs' separation of powers challenge.

Appellants' primary defense is that INA § 212(f) is a delegation of power so boundless it permits the President's actions here. That argument ignores the reasoning in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), and raises grave non-delegation concerns.

Appellants neither make a strong showing on the merits nor offer any evidence the injunction causes concrete harm. Instead, the record confirms enforcing the Proclamation would cause irreparable harm and is against the public interest. The scope of the injunction is no more extensive than necessary to preserve the status quo and prevent irreparable harm to Plaintiffs and the putative class. For these reasons, the Court should deny Appellants' motion.

BACKGROUND

I. The Immigration and Nationality Act

The INA is a comprehensive statutory scheme that prioritizes admission of immediate relatives of U.S. citizens, including their spouses, parents, and children, by allowing an unlimited number of permanent immigrant visas to be issued to

those individuals. *See* 8 U.S.C. § 1151(b)(2)(A)(i); *Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1094 (9th Cir. 2005) ("The [INA] was intended to keep families together.").

The INA expresses congressional judgment about how to assess whether an intending immigrant could become a financial burden to the United States. 8 U.S.C. § 1182(a)(4). The statute's "public charge" test requires "at a minimum" consideration of (1) age; (2) health; (3) family status; (4) assets, resources and financial status; and (5) education and skills. *Id.* § 1182(a)(4)(B)(i). "If anything has been consistent, it is the idea that a totality-of-the-circumstances test governs public-charge determinations." *City & Cty. of S.F. v. U.S. Citizenship & Immigration Servs.*, No. 19-17213, --- F.3d ---, 2019 WL 6726131, at *17 (9th Cir. Dec. 5, 2019).

The Violence Against Women Act ("VAWA"), which amended the INA to protect certain victims of abuse who are not citizens, expressly exempts those arriving under VAWA from any financial means test. 8 U.S.C. § 1154(a)(1)(A)(v)(I)(cc), (a)(1)(B)(iv)(I)(cc).

II. The Affordable Care Act and Other Healthcare Laws

In the ACA, Congress expressly exercised its Article I powers to regulate economic activity and interstate commerce for the purpose of "reducing the number of the uninsured," and decreasing uncompensated care costs, calculated at

$43 billion in 2008. 42 U.S.C. §18091(2)(F). Congress attributed those costs in part to individuals insuring themselves with personal funds or with healthcare plans that provide inadequate coverage. *See id.* To address that problem, Congress took specific actions to increase the comprehensiveness and affordability of health coverage. It required most residents to maintain "minimum essential coverage"; established exchanges to facilitate enrollment in plans that offer "essential health benefits"; prohibited discrimination in health care based on pre-existing conditions, and other factors; expanded and improving access to Medicaid; and provided financial assistance to residents, including recently-arrived immigrants. *See generally* 42 U.S.C. §§ 300gg–300gg-5, 1396a, 18021 to 18024, 18031, 18116, 18071, 18091; 26 U.S.C. §§ 36B, 5000A. Uncompensated care costs have declined as a result. *See* Exs. 12, 26; ECF No. 71.[1]

The ACA and other healthcare laws reflect congressional intent to ensure healthcare-related benefits for qualified immigrants. Congress expressly provided tax credits for ACA exchange plans to a broad swath of "alien[s] who [are] lawfully present in the United States" with household incomes up to 400 percent of the federal poverty line. 26 U.S.C. § 36B(c)(1)(B). Congress also addressed healthcare eligibility for noncitizens in the Public Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), the Children's Health

[1] "ECF" numbers refer to the District of Oregon docket below.

Insurance Programs of 1997 ("CHIP"), and the CHIP Reauthorization Act of 2009 ("CHIPRA"). *See* ECF 1 ¶¶ 92–96. Under CHIPRA, Congress affirmatively provided federal dollars for states to fund coverage for newly-arrived immigrant children up to age 21 and pregnant women during their first five years in the United States. *See id.* ¶ 96.

III. The Proclamation

Presidential Proclamation 9945 ("The Proclamation") bars entry of intending immigrants who satisfy all the INA's admission standards but cannot prove to the satisfaction of a consular officer they will be covered by "approved" health insurance within 30 days of entering the United States, or have the "financial resources" to cover "foreseeable" medical costs. 84 Fed. Reg. 53,991 (Oct. 9, 2019). Its purported purpose is to protect the "healthcare system" and "taxpayers" from the burden of "uncompensated care costs," and to alleviate the strain of those costs on "Federal and State government budgets." *Id*. The Proclamation estimates uncompensated care costs at $35 billion per year but does not state the proportion of those costs attributable to uninsured lawful new immigrants, which is likely less than 0.06 percent. *See* Ex. 12 ¶¶ 17-18.

The Proclamation issued on October 4, 2019 with an effective date of November 3, 2019. 84 Fed. Reg. 53,991 § 7. There is no evidence any agency was involved before the Proclamation issued, but the State Department later took action

to implement it on schedule. Among other things, the State Department issued an Emergency Notice of Information Collection on October 30, 3019, providing 48 hours for public comments. *See* ECF No. 45-26. It received 300 comments during that window; the State Department conceded it could not respond to all comments before the "implementation deadline," but OMB approved the collection on November 1, 2019. ECF Nos. 45-27, 45-28.

Comments identified numerous irrational aspects of the Proclamation. *See, e.g.*, Exs. 20-30. Most of the "approved" insurance plans are not legally or practically available to intending immigrants abroad. Ex. 14 ¶¶ 12-15; Ex. 16 ¶¶ 6-7; Ex. 17 ¶¶ 17-18; Ex. 18 ¶¶ 17-20; Ex. 19 ¶ 15; Ex. 25 at 6; ECF 1 ¶ 65; ECF 88 at 20-22. Other "approved" plans do not provide comprehensive care, and some have been banned in many states because they can *increase* uncompensated care costs. ECF 88 at 20-22; Ex. 16 ¶¶ 4-7; Ex. 17 ¶¶ 11-23; Ex. 19 ¶¶ 10-16; Ex. 23 at 2-3. Commenters also expressed concern that prospective immigrants could be misled into purchasing inadequate or ineffective insurance. *See, e.g.*, Ex. 20 at 5; *see also* Ex. 16 ¶¶ 3-7; Ex. 17 ¶¶ 17-22. The commercial website Appellants reference as a source for "approved" plans validates those concerns. *See* Appellants' Motion for a Stay ("Motion"), Dkt. 2-1 at 5 (Dec. 4, 2019). It lists

plans that are not intended for U.S. residents, and provides limited coverage with numerous exclusions, including for preexisting conditions.[2]

IV. Plaintiffs

Plaintiffs are individual U.S. citizens sponsoring immediate family members for immigrant visas; a foreign national whose visa application has been approved but who has not had his consular interview; and an organization whose work and mission have been materially disrupted by the Proclamation. *See* Opinion & Order 11-15, ECF No. 95 ("Order"); Exs. 1-11. The individual plaintiffs seek only lawful family reunification under the INA. Order at 12. Plaintiff Latino Action Network ("Latino Network") seeks relief from the burden on its resources caused by the need to respond to confusion and concern about the Proclamation among the population it serves. Ex. 10.

LEGAL STANDARD

Because a stay pending appeal is an "intrusion into the ordinary processes of administration and judicial review," *Nken v. Holder*, 556 U.S. 418, 427 (2009) (internal citations omitted), the party requesting a stay must "show[] that the

[2] *See Diplomat American Insurance Policy Document* at 8-9, 15, https://www.visitorscoverage.com/policydoc/diplomat-america-insurance-policy-document.pdf; *Inbound Immigrant Insurance Policy Document* at 1, 12, https://www.visitorscoverage.com/policydoc/inbound-immigrant-insurance-policy-document.pdf; *Patriot America Plus Insurance Policy Document* at 15, 25, https://www.visitorscoverage.com/policydoc/patriot-america-plus-insurance-policy-document.pdf .

circumstances justify an exercise of [the Court's] discretion." *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 769 (9th Cir. 2018) (quoting *Nken*, 556 U.S. at 433-34). The Court considers: (1) whether the appellant has made a "strong showing" of likely success on the merits, (2) "whether the [appellant] will be irreparably injured absent a stay," (3) whether a stay "will substantially injure" other parties, and (4) "where the public interest lies." *Id.* at 770. "[T]he 'mere possibility' of success or irreparable injury is insufficient." *Id*.

ARGUMENT

I. Appellants Have Not Made a Strong Showing on the Merits

Neither the Constitution nor any statute empowered the President to issue Proclamation 9945. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (explaining executive action "must stem either from an act of Congress or the from the Constitution itself"). The Proclamation cannot stand because it "takes measures incompatible" with congressional will. *Id.* at 637. Appellants' Section 212(f) defense disregards the reasoning in *Hawaii* and raises grave non-delegation concerns. For these reasons, Appellants are not likely to defeat Plaintiffs' separation of powers claim and the Court should deny their motion.

A. The Proclamation Is Not a Lawful Exercise of Article II Power

Appellants cannot make a strong showing the Proclamation is a lawful exercise of executive authority. Appellants admit the Proclamation addresses the

"narrow[] problem" of "uncompensated healthcare costs," and the impact of those costs on American taxpayers. Motion at 3. Nevertheless, they attempt to characterize the Proclamation as an exercise of "executive power over foreign affairs." *Id.* at 10. That characterization is contradicted by the plain language of the Proclamation itself.

The Proclamation's purpose is to reduce America's uncompensated care costs. It says nothing about how those costs pertain to foreign affairs. The Proclamation thus stands in stark contrast to those Appellants cite, each of which related to foreign affairs on its face. *Id.* at 13-16; *See* Proclamation No. 4865, 46 Fed. Reg. 48,107 (Oct. 1, 1981) (addressing "international cooperation" to intercept "vessels trafficking in illegal migrants" and "discussions with the Governments of affected foreign countries"); Proclamation No. 8342, 74 Fed. Reg. 4093 (Jan. 22, 2009) (implementing an act of Congress that "reflects international antitrafficking standards" to eradicate trafficking "around the world"); Proclamation No. 8697, 76 Fed. Reg. 49,275 (Aug. 9, 2011) (addressing the "prevention of atrocities internationally" and aiming to "prevent humanitarian crises around the globe"); Exec. Order No. 12807, 57 Fed. Reg. 23,133 (June 1, 1992) (directing the Secretary of State to enter into "cooperative arrangements with appropriate foreign governments" in connection with repatriation interdicted aliens); Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) (referring to

"ongoing efforts to engage [certain] countries willing to cooperate, improve information-sharing and identity-management protocols"). Proclamation 9945 evinces no such connection to foreign affairs. 84 Fed. Reg. 53,991.

Appellants are left with the bare assertion that any immigration matter "necessarily implicates foreign relations." Motion at 13. But their cases do not establish that executive branch has unlimited Article II authority to regulate immigration *See United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 311 (1936) (referring to a Proclamation issued "pursuant to authority" conferred on the President by a joint resolution on arms sales); *Fong Yue Ting v. United States*, 149 U.S. 698, 705 (1893) (describing exclusion power running "through the action of the legislative department" pursuant to the Geary Act of 1892)*; Nishimura Ekiu v. United States*, 142 U.S. 651, 660-61 (1892) (concluding an executive officer had authority to detain an "alien immigrant" under the Immigration Act of 1891).

Appellants' authorities only emphasize the lack of a "foreign relations" dimension here. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 165 (1993) (addressing both statutory and "treaty rights" of Haitians interdicted on the high seas for repatriation); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544-45 (1950) (addressing specific statutory authorization for the President to impose entry restrictions "only when the United States is at war or during the existence of the national emergency proclaimed May 27, 1941").

The mere assertion that the President acted pursuant to his "foreign relations" power is not enough to show that his actions "stem" from the "Constitution itself." *Youngstown*, 343 U.S. at 585-87. Instead, a Proclamation is judged by its "text" and understood in terms of its "object and policy." *Bassidji v. Goe*, 413 F.3d 928, 934 (9th Cir. 2005). Here, the text and purpose of the Proclamation establish that it concerns "internal affairs" ordinarily for the legislature. *See Curtiss-Wright*, 299 U.S. at 315. Therefore, Appellants are unlikely to succeed in showing the Proclamation is lawful.

B. The Proclamation Conflicts with Congressional Will

The Proclamation cannot stand because it "takes measures incompatible with the expressed or implied will of Congress" in the INA, healthcare laws, and the VAWA. *See Youngstown*, 343 U.S. at 637.

1. The Proclamation Conflicts with the INA

The Proclamation conflicts with an express statutory provision that requires a multi-factor test to determine who will financially burden the United States such that they may be deemed inadmissible. 8 U.S.C. § 1182(a)(4). Far from adding a "similar" restriction to those Congress approved, the Proclamation overrides the INA's test and subjects those who consular process to an entirely new single-factor dispositive test. The relationship between the Proclamation and 8 U.S.C. § 1182(a)(4) is therefore nothing like the complementary relationship between the

Proclamations and statutes Appellants cite. Motion at 16. In Appellants' examples, the Proclamation and the corresponding statutory provision advanced similar objectives; they did not work at cross-purposes. Here, the Proclamation's healthcare insurance test supplants a long-standing congressional judgment about how to assess admissibility for immigrants who may financially burden the United States.

The sheer enormity of the Proclamation's anticipated impact belies Defendants' claim that the Proclamation supports existing law. The implied will of Congress is that issuance of immigrant visas continues apace according to the system Congress established in the INA instead of subjecting up to 60 percent of otherwise qualified immigrants to a new admission requirement established by the President alone.

2. The Proclamation Conflicts with Healthcare Laws

Congress has determined that improving access to subsidized comprehensive coverage reduces the problem of uncompensated care costs. Congress specifically cited uncompensated care costs among the reasons it required minimum essential coverage under the ACA. 42 U.S.C. § 18091. It also provided premium tax credits to immigrants so they could obtain comprehensive coverage that complies with the ACA's standards for minimum essential coverage. 26 U.S.C. § 36B(c)(1)(B)(ii). The Proclamation directly conflicts with this scheme by declaring that Medicaid

and "subsidized" health insurance offered within a state's individual market are not "approved health insurance" for purposes of entry to the United States. It prohibits intending immigrants, qualified for admission under the INA, from entering and receiving the benefits Congress expressly intended for them to have. The Proclamation thus conflicts with express congressional intent that new immigrants obtain quality healthcare coverage upon arrival in the United States.

3. The Proclamation Conflicts with the VAWA

Congress exempted immigrant family members of survivors of violent crime or domestic violence from any "financial burden" restriction, including the public charge provisions. *See* 8 U.S.C. § 1154(a)(1)(A)(iii)-(vi). Yet the Proclamation subjects these same individuals to its new single-factor test. It therefore conflicts with the VAWA.

C. The Proclamation Is Not a Lawful Exercise of Section 212(f)

In *Hawaii*, the Court took three analytical steps before concluding the proclamation in that case was authorized under Section 212(f). Those same steps confirm the Proclamation here is unlawful.

1. The Proclamation Does Not Comport with the Text of Section 212(f)

Hawaii began with the "textual limits" of Section 212(f), which require the President to "find" that entry of a class of aliens "would be detrimental to the interests of the United States." 138 S. Ct. at 2408-10. In that case, the President

had instructed multiple agencies to perform a "comprehensive evaluation" of country-by-country security and visa issuance practices, "set[] forth extensive findings," and concluded the order would "protect national security and public safety, and [] induce improvement" in specific countries' vetting and information sharing practices. *Id*. at 2408-09. The Court declined a more "searching inquiry" because "in the context of international affairs and national security" the Court will "grant weight to [the President's] conclusions." *Id*. In contrast, this Proclamation is not supported by findings about the targeted class and the President's bare conclusions about healthcare economics are owed no deference. Therefore, the Proclamation cannot survive the first step in the *Hawaii* analysis.

2. Structural Conflicts Invalidate the Challenged Action Here

After analyzing the text of Section 212(f), the Court considered whether the particular exercise of delegated authority was consistent with other provisions of the INA. *Id*. at 2409-10. In particular, the Court examined provisions for individualized vetting and information sharing and found the Proclamation "support[ed]" those provisions because they "promot[ed]" the same congressional goals. *Id*. at 2420-21. But here, the Proclamation conflicts with multiple provisions of the INA and congressional objectives. *See supra* Section I.B.

3. Congress Expressed its Intent to Constrain Executive Power in the Relevant Sphere

In the final step of its statutory analysis, the *Hawaii* Court found no indication that Congress intended to "constrain the President's power" within the same "sphere" as the Proclamation in that case. 138 S. Ct. at 2409, 2414. Again, the same inquiry leads to a different conclusion here. By all ordinary tools of statutory interpretation, Section 212(f) grants residual power that only applies to those "not covered by one of the categories in section 1182(a)." *Abourezk v. Reagan*, 785 F.2d 1043, 1049 n.2 (D.C. Cir. 1986) (Ginsburg, J.). The "public charge" provision situated just before Section 212(f) in the INA confirms Congress constrained executive power in the same sphere where the Proclamation purports to operate. Likewise, the lack of any broad delegation of authority in the ACA confirms that Congress constrained the President's power in the healthcare sphere. The suggestion that a delegation of power in the INA could permit the President to override judgments about how to address uncompensated care costs Congress made in the ACA would not be consistent with "[c]ommon sense and historical practice," *Hawaii*, 138 S. Ct. at 2415, nor the "context" and "purpose" of the delegated authority. *Gundy v. United States*, 139 S. Ct. 2116, 2126 (2019).

D. Appellants' Interpretation of Section 212(f) Raises Grave Non-Delegation Concerns

Appellants suggest the steps of the *Hawaii* analysis were unnecessary because Section 212(f) applies so long as the President declares the excluded aliens detrimental to *any* national interest. Motion at 2-3, 16-17. But if Section 212(f) is

such a broad delegation of authority, it constitutes a wholesale "[a]bdication" of legislative power to the President. *Clinton v. City of New York*, 524 U.S. 417, 452 (1998) (Kennedy, J., concurring). It would give the President discretion to rewrite immigration law on his own, with "literally no guidance for the exercise of [that] discretion." *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 474 (2001).

Our "constitutional structure" cannot withstand a "flight of power from the legislative to the executive branch." *Gundy*, 139 S. Ct. at 2142 (Gorsuch, J., dissenting). That means Congress cannot "expressly and specifically delegate to the [Executive Branch] the authority *both* to decide [a] major policy question *and* to regulate and enforce" its decision. *Paul v. United States*, 140 S. Ct. 342 (2019) (statement of Kavanaugh, J., respecting the denial of certiorari) (emphasis added). Yet that is precisely what Appellants claim Congress did. They assert that Section 212(f) gives the President the sole power to decide a major question of domestic policy (how to pay for certain legal immigrants' health care), and to enforce his unilateral policy decision (by the Proclamation's terms). That reading is not "fairly possible" and would be contrary to congressional intent. *Boos v. Barry*, 485 U.S. 312, 331 (1988).

Hawaii assumed that Section 212(f) cannot "override particular provisions of the INA." 138 S. Ct. at 2411. It permitted a fact-based executive action the

Court found supportive of congressional will. *See id.* By that standard, Section 212(f) might stand but the Proclamation must fall.

II. Appellants Have Not Made a Strong Showing on The Balance of Harms

A. The Injunction Does Not Cause Appellants Irreparable Harm

Appellants claim irreparable harm because the injunction prevents "the President from taking action effectuating an Act of Congress." Motion at 18. But the Proclamation does not carry out congressional will, and any "institutional injury" is reparable by a judgment on the merits. *Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017); *see Texas v. United States*, 787 F.3d 733, 767-68 (5th Cir. 2015) ("[I]t is the resolution of the case on the merits, not whether the injunction is stayed pending appeal, that will affect those principles."); *see also E. Bay Sanctuary Covenant*, 932 F.3d at 778.

More fundamentally, there is no evidence the injunction causes any harm. The record shows recent uninsured immigrants represent only 0.3 percent of American adults and only 2.9 percent of all uninsured adults. Ex. 12 ¶ 17. Uninsured immigrants use less than 0.06 percent of total American medical resources and only 0.08 percent of emergency room services—figures that would be smaller if limited to *legal* uninsured immigrants subject to the Proclamation. Ex. 12 at 10. Even if the Proclamation could reduce uncompensated care costs, delayed enforcement would not cause irreparable harm. "Mere injuries, however

substantial, in terms of money, time, and energy necessarily expended . . . are not enough." *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980) (alteration in original) (*quoting Sampson v. Murray*, 415 U.S. 61, 90 (1974)).

Finally, Appellants contend that absent a stay "the chance to require intending immigrants to obtain necessary healthcare coverage upon entry is lost." Motion at 19. But the ACA itself addresses this very concern. Subject to only limited exceptions, it requires United States citizens and legal residents to maintain "minimum essential coverage." 42 U.S.C. § 18091; 26 U.S.C. § 5000A. Congress enacted that requirement so individuals would not "forego health insurance coverage." 42 U.S.C. § 18091(2)(A). To that end, the ACA expressly provides financial assistance to newly-arrived legal immigrants to help them afford minimum essential coverage. 26 U.S.C. § 36B(c)(1)(B). The injunction preserves this status quo. Therefore, Appellants cannot establish the injunction causes any irreparable harm.

B. A Stay Would Substantially Injure Plaintiffs and the Putative Class

The Court need not reach the final two stay factors because Appellants did not carry their burden on the first two. *Nken*, 556 U.S. at 433-35. But if it addresses the remaining factors, it owes deference to the district court's findings. *See Aberdeen & Rockfish R. Co. v. Students Challenging Regulatory Agency*

Procedures (SCRAP), 409 U.S. 1207, 1218 (1972) (noting the high level of deference owed to district court's "factual evaluation of [the enjoined action's] effect"). Here, unrebutted record evidence supports the district court's conclusions. Order at 36; *see also* Ex. 13. And Appellants do not even attempt to address the public interest. *See Nken*, 556 U.S. at 435-36. That is not surprising given overwhelming evidence weighing against a stay. *Amici curiae*—including 21 states, the District of Columbia, and the City of New York—explained the "significant harm these states and other governmental entities will suffer if the Proclamation is allowed to go into effect." Order at 38; ECF No. 71; *see also* Ex. 14, 22, 23, 26, 27, 30. And the evidence demonstrates the Proclamation would likely *increase* uncompensated care costs by impeding access to affordable comprehensive insurance, incentivizing underinsurance, and undermining the commercial insurance market. ECF 88 at 22-25; Exs. 15-21; 24-26; 28-29.

III. The Scope of the Injunction is Warranted

This Court should reject Appellants' request to limit the injunction's scope. Motion at 22. Such a limited injunction would not address the harm the Proclamation inflicts. Instead, it would upend the lives of thousands of people, suspend the Proclamation for only a select group, confuse national immigration policy, and create more problems than it would solve. *See* Order at 46. The district court correctly found, based on record evidence, that a class-wide injunction was

necessary to preserve the status quo and prevent class-wide irreparable harm created by alleged class-wide conduct. *Id.*; *see also City & Cty. of S.F. v. Trump*, 897 F.3d 1225, 1244 (9th Cir. 2018) ("Once a constitutional violation is found, a federal court is required to tailor the scope of the remedy to fit the nature and extent of the constitutional violation.") (quoting *Hills v. Gautreaux*, 425 U.S. 284, 293–94 (1976)).

"Crafting a preliminary injunction is 'an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents.'" *California v. Azar*, 911 F.3d 558, 582 (9th Cir. 2018) (quoting *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017)). This Court has rejected a blanket restriction on broad injunctions, deferring to that "considerable discretion in ordering an appropriate equitable remedy." *City & Cty. of S.F.*, 897 F.3d at 1244-45. This Court's "well-established rule" approves equitable relief "'tailored to remedy the specific harm alleged.'" *E. Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1030 (9th Cir. 2019) (quoting *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991)); *see also id.* at 1029 (citing *Azar*, 911 F.3d at 582).

These standards apply equally in the class action context, permitting class-wide injunctive relief where necessary to preserve the status quo and prevent irreparable harm to the putative class. *See, e.g.*, *Just Film, Inc. v. Merchant Servs.*,

Inc., 474 F. App'x 493, 495 (9th Cir. 2012) (upholding class-wide preliminary injunction as to putative plaintiff class); *J.L. v. Cissna*, 341 F. Supp. 3d 1048, 1070 (N.D. Cal. 2018). Because class actions are the "exception to the usual rule that litigation is conducted by and behalf of the individual named parties only," *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (citation omitted), preliminary injunctive relief in class cases need not be so limited. "An injunction is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is *not* a class action—if such breadth is necessary" to remedy the harm alleged. *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501-02 (9th Cir. 1996) (emphasis added).[3] That is true whether the injunction is issued before or after the class is certified. *Gooch v. Life Inv'rs Ins. Co. of Am.*, 672 F.3d 402, 433 (6th Cir. 2012) ("[T]here is nothing improper about a preliminary injunction preceding a ruling on class certification.").[4]

The district court found that, without an injunction, irreparable harm would befall not only Plaintiffs, but also putative class members across the country. Order at 46. It noted 21 states, the District of Columbia, and New York City offered

[3] *Hannigan*'s teaching that "injunctive relief *generally* should be limited to apply only to named plaintiffs," 92 F.3d at 1501 (emphasis added), implies that there are exceptions to the general rule.

[4] That makes sense because the purpose of a preliminary injunction is to preserve the status quo that existed before a complaint and class certification.

record evidence that putative class members in those locations are likely to suffer irreparable harm. Order at 46. It further found those harms significant, potentially reverberating throughout state and local governments, across employment sectors, and into the national economy. Order at 37-42. The district court's findings establish a class-wide injunction is necessary "to meet the exigencies of [this] particular case." *Azar*, 911 F.3d at 584 (quoting *Int'l Refugee Assistance Project*, 137 S. Ct. at 2087); *see also id*. (looking to record evidence in to determine whether the court abused its discretion).[5]

Additionally, where, as here, the challenged policy has demonstrably national, systemwide impact, broad systemwide relief is appropriate. *See Hawaii v. Trump*, 878 F.3d 662, 701 (9th Cir. 2017) (upholding systemwide injunction when "necessary to give Plaintiffs a full expression of their rights"), *reversed on other grounds*, 138 S. Ct. 2392 (2018). "[T]he Constitution requires a uniform Rule of Naturalization; Congress has instructed that the immigration laws of the United States should be enforced vigorously and uniformly, and the Supreme Court has described immigration policy as a comprehensive and unified system." *Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 908 F.3d 476, 511-12 (9th Cir.

[5] The district court was also correct to issue class-wide injunctive relief to both the "U.S. Petitioner Subclass" and the "Visa Applicant Subclass." Order at 42-46. Plaintiffs' First Amended Complaint—the operative complaint in this case—includes at least one representative of each subclass. *See* ECF 100 ¶¶ 14-22.

2018), (internal quotation marks omitted), *cert. granted*, 139 S. Ct. 2779 (2019). An injunction limited to the named Plaintiffs would be "inimical to the principle of uniformity." *Id.* at 512.

Appellants' concern that a universal injunction "deprive[s] other parties of the right to litigate in other forums" is unwarranted here. Motion at 20. Recent cases show that the existence of a systemwide injunction generally has *not* foreclosed or prevented litigation in other forums, as Defendants and this Court previously have feared. *Compare, e.g.*, *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289 (E.D. Pa. 2018) (issuing injunction in June 2018), *with City of Chicago v. Sessions*, 321 F. Supp. 3d 855 (N.D. Ill 2018) (issuing injunction in July 2018); *with City &Cty. of S.F. v. Sessions*, 349 F. Supp. 3d 924 (N.D. Cal. 2018) (issuing injunction in October 2018). Nothing prevents other plaintiffs from seeking relief in other jurisdictions, or the District Court from revisiting the scope of the injunction should class certification be denied. Thus, there is no threat that the District Court's order will "unnecessarily stymie novel legal challenges and robust debate" across jurisdictions. *E. Bay Sanctuary Covenant*, 934 F.3d at 1029 (internal quotation marks and citation omitted).

In determining the appropriate scope of injunctive relief, district courts are afforded broad discretion to "tailor[] [the] remedy [to] the specific harm alleged."

Id. at 1029-30. That is precisely what the district court did here; it did not abuse its discretion.

CONCLUSION

For the foregoing reasons, the Court should deny Appellants' Motion.

DATED this 16th day of December, 2019.

Respectfully submitted,

/s/ Naomi Igra

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing **OPPOSITION TO DEFENDANTS-APPELLANTS' URGENT MOTION FOR STAY** complies with the type-volume limitation of Fed. R. App. P. 27 because it contains 5,179 words. This opposition complies with the typeface and the type style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

/s/ Naomi Igra

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF BLAKE DOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Blake Doe, declare as follows:

1. I am a United States citizen. I was born in Portland, Oregon.

2. I currently live in Corvallis, Oregon, with my wife, where I am a college senior at Oregon State University studying civil engineering.

3. I have lived my whole life in Oregon. I grew up with my mother and father in Tualatin and the Portland area. I lived with them up until I went to college. I plan to begin my job search after graduation.

4. My parents are really amazing people, and I aspire to hold and share the values of compassion, hard work, and responsibility that they have instilled in me. My father, who is [redacted] years old, and my mother, who is [redacted] years old, currently reside in Oregon. They are citizens of Mexico. Because of their sacrifices, I will be the first person in my family to graduate from college. I anticipate graduating in June 2020.

5. I have health insurance through my university, and I also have dental insurance through my wife who works full time. I intend to apply for insurance through the Oregon Health Plan after I graduate. I cannot enroll in my wife's employer plan because it is prohibitively expensive for me.

6. I am seeking to permanently unify my family together here in Oregon because this is where I am from. I love my parents. We are a strong and proud family, and I want to be together with them. I filed petitions for my parents in order to regularize their status.

7. I applied for my parents to come to the United States on or around April 27, 2017. The I-I30 petitions were approved on or around January 17, 2018. On June 11, 2019, the USCIS determined that my members of my family would suffer an extreme hardship if visas were denied to my parents and, therefore, approved an I-601A extreme hardship waiver in order to enable my parents to complete the immigration process.

8. Since then, my parents have submitted all the necessary documents and information to proceed with the immigrant visa process and are awaiting the scheduling of the interview at the American Consulate in Ciudad Juarez, Mexico. According to my lawyer, the interview could happen at any time.

9. They had been waiting the interview when they received news of the October 4 Presidential Proclamation detailing the ban on their entry unless they will be covered by approved health insurance within 30 days of their entry into the United States, or unless they possesses the financial resources to pay for reasonably foreseeable medical costs.

10. I have looked at what is considered approved health insurance under the President's Proclamation and the plans are either not available to my parents or are unaffordable due to my family's current financial situation. For example, Medicare is not available to my parents and none of our family members can add our parents onto an approved plan.

11. My parents' sacrifices have not come without cost—both to them and to me. My mother's health has declined recently. She has rheumatoid arthritis and Lupus Erythematosus – both painful conditions. She receives some treatment that she pays for out of pocket. The treatments are necessary to enable her to live without pain. It isn't comprehensive treatment though. She has tried to get insurance, but she has been told she is ineligible because of her immigration status. My father has repeatedly tried to obtain insurance for her. His employer does not offer a health insurance plan. She would be better off with comprehensive treatment which could address the underlying causes of her conditions and improve her health instead of just controlling for pain.

12. I reviewed the list of "approved" health care plans that are listed on the Proclamation. As a full-time student in college, I have no income and cannot afford health insurance for my parents. I also cannot afford all the costs for their foreseeable medical care. I cannot add my parents to my student insurance plan. I also have around $20,000 worth of student loan debt. I am not a member of the U.S. military so I cannot get health care for my parents under the military plan. My parents are not eligible for visitor health insurance because they are already residing in the United States.

13. I understand that under the new Proclamation, the process I began for them will be indefinitely stopped. As I understand, when the interview at the consulate is scheduled, my parents will have to attend in order to complete the process for their immigrant visas. However, because they are not eligible for any of the approved plans and they cannot afford their foreseeable medical costs without insurance, under the Proclamation they will be refused a visa. My mother and father would then be stranded in

Mexico far away from their family here in Oregon. The separation will have real impacts on me and others in my family, including my parents. I am also very concerned about my mother's ability to obtain the necessary pain treatments. The hardship my family would face is real. I've attached redacted copies of the approval notices for the I-601A provisional waivers that USCIS approved for my parents.

14. I understand that my parents will not be able to complete the immigration process, they will continue to live in fear and under the threat of removal proceedings being initiated against them, and I will continue to live in fear every day of permanent separation. This fear has very real tangible impacts on me and my parents such as causing constant worry and feelings of depression. I worry that one day I might call my parents and they won't pick up because they've been detained by ICE.

15. If my parents leave for their consular interview and have their visa refused, it would automatically revoke their waiver and they could face a ten-year bar to re-entering the United States. At the very least, they would have to re-apply for a waiver, which could take a year or more to be approved.

16. I am willing to serve as a class representative on behalf of those who are similarly situated to me and cannot have family members join them in the United States because of the current restrictions.

17. I know that if the class is certified I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all suffering due to the unfair restrictions on admissions imposed by this Administration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 7, 2019 at Corvallis, Oregon.

[redacted]

/s/ "Blake Doe"

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF JOHN DOE #1 IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Declaration of John Doe #1

I, John Doe #1, upon my personal knowledge, hereby declare as follows:

1. I am a United States citizen of Mexican origin. I became a naturalized citizen on November 29, 2011.
2. I currently live in Beaverton, Oregon, with my wife and [redacted] United States citizen son. I am no longer able to work due to disability.
3. I currently have insurance through the Oregon Health Plan ("OHP"). My son and I both have coverage under OHP. It is Oregon's Medicaid program. Since I can no longer work, I cannot get insurance through an employer or afford private health insurance.
4. I have sponsored an immigrant visa application for my wife so that she can have lawful status to live and work in the United States.
5. My wife is a national of Mexico, and currently resides with me in Beaverton, Oregon. My wife and I have been married since 2003.
6. I applied for my wife to come to the United States on or around November 3, 2016. The I-130 petition was approved on July 21, 2017.
7. Since then, my wife had her provisional unlawful presence waiver approved, completed her DS-260, submitted documents to the National Visa Center, and the interview was scheduled for Wednesday, November 6, 2019 at 07:45 am in Ciudad Juarez, Chihuahua, Mexico.
8. She was awaiting the interview when we received news of the October 4 Presidential Proclamation detailing the ban on her entry unless she will be covered by approved health insurance within 30 days of her entry into the United States, or unless she possesses the financial resources to pay for reasonably foreseeable medical costs.
9. My wife and I studied and researched all the approved health insurance plans under the President's Proclamation and every plan was either not available to my wife and I or were unaffordable and would remain so due to my family's current financial situation. For example, we are not eligible for Medicate or Tricare and we cannot afford a short-term plan or visitor insurance, even if available.

10. I have not been able to work since May 2018. I had heart surgery in July 2018 and now have a pacemaker. I received my Social Security Disability determination around April 2019. Since I had to stop working indefinitely, my income has been limited to my Social Security Disability benefits. This does not leave my family with a lot of extra money. I thought that my wife was going to receive her residency soon and be able to work to earn extra money for the family, but it seems that is not going to happen anymore.
11. If my wife were to obtain an immigrant visa and gain permanent residency, she would most likely be able to work and help support our family.
12. I cannot imagine living apart from my wife if she were to go to her interview and have her visa denied because of the Proclamation. Since she has a 601A wavier, if her visa was refused it would revoke her waiver and she would need to start the waiver process all over again. She would face at least another year in Mexico where she has no one to stay with and no means by which to support herself.
13. My son and I need her to be here with us. We both depend on her to get by each day. My son suffers from several health complications and is currently in the hospital. Given my own health issues, I do not know how I would be able to care for him without her. Any period of family separation would prove intolerable and perhaps life-threatening to our child and me.
14. For this reason, my wife and I rushed to change her interview date at the consulate. We could not bear the thought of being separated. On November 1, 2019, we asked the Consulate to postpone the interview. We have not received any confirmation of this request. We were not given a new interview date but expect that it will be held within two to three months.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Portland, Oregon on November 5, 2019.

John DOE

John Doe

I, Eliasib Riquelme, am competent to translate from Spanish into English, and certify that the translation of John Doe oral statements is true and accurate to the best of my abilities.

Eliasib Riquelme

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UNITED STATES DISTRICT COURT

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Plaintiffs,

v.

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Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF JANE DOE #2 IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Declaration of "Jane Doe #2"

I, "Jane Doe", upon my personal knowledge, hereby declare as follows:

1. I am a United States citizen who was admitted to the United States as an LPR in 2014 and who naturalized in 2018.
2. I currently live in Rancho Cucamonga, California with my two children. I work as a packager at a nail plate company. In the United States I have my brothers and sisters here. Life in the United States has not been easy and I have had many obstacles along the road. I have been in this country for 13 years and I have seen the beauty and opportunities this country has for people. As a victim of abuse, I am thankful to this country for giving me the chance to get up on my two feet and continue with my life after that dark time. The United States has given me a sense of hope and happiness for the future and although I am not where I would like to be, I am getting there.
3. I currently have MediCal health insurance, through California's state Medicaid program, due to my low income. It has been hard financially as a single mother to be able to afford a private health insurance.
4. I have sponsored an immigrant visa application for my parents, so that I can reunite with them here.
5. My parents are [redacted] and currently reside in Nicaragua. They are nationals of Nicaragua.
6. I applied for my parents to come to the United States on or around December 19, 2018. The I-130 petitions were approved on or around July 09, 2019.
7. Since then, my parents have received the NVC letter to proceed with the Consular Process and we are currently working on the collection of information and documents to submit the DS-260 and immigrant documents.
8. They were awaiting the interview when they received news of the October 4 Presidential Proclamation detailing the ban on their entry unless they will be covered by approved health insurance within 30 days of the alien's entry into the United States, or unless the alien possesses the financial resources to pay for reasonably foreseeable medical costs.

9. Currently my parents do not have health insurance. They go to local clinics in Nicaragua when they need medical assistance. After being victim of abuse and being a single mother, it has been financially hard for me. I will need a joint sponsor in order to complete the affidavit of support section of my parents' immigrant visa.
10. I have looked at what is considered approved health insurance under the President's Proclamation and the plans are either not available to my parents or are unaffordable due to my family's current financial situation. For example, Medicare is not available to my parents and none of our family members can add our parents onto an approved plan.
11. I have already been living apart from my parents for 13 years, and the separation has been difficult to say the least. I can only communicate with my parents twice a week, if that, since they live in a remote location. The separation has been extremely hard. To be away for many years from my parents made me feel alone in this country. To have gone through the domestic violence and not have my mother and father here to run to and ask for help. To have endured so many horrible moments but also beautiful ones like the birth of my children and they could not be a part of that, breaks my heart. Not only has a daughter been separated from her parents, but grandkids have not had the opportunity to meet their grandparents.
12. It has been many milestones that my parents have missed in their grandkids' life and my children have missed the opportunity to experience what it is to have a loving, caring, nurturing grandparent in their life. It is sad to realize that they do not know the meaning of a grandparent. My parents are the only grandparents involved in my kids' life, not having them physically here is extremely hard. They have missed birthdays, Christmas, New Years, and every single achievement personally and in school. Although we try to always keep them involved, it is not easy keeping communication when we are so far away. These are moments that they will never get back and many firsts that are long gone. I just pray that my kids are able to meet their grandparents soon and be able to make up all the lost time and moments.

13. I understand that under the new Proclamation I am indefinitely unable to reunite with my parents. When I learned that our separation will be prolonged indefinitely, I felt saddened. To have gone through many awful moments and then having hope to finally reunite with your parents is a feeling that cannot be explained. All those hopes were crushed by the uncertainty of how much longer it would take with the Proclamation.
14. I am willing to serve as a class representative on behalf of those who are similarly situated to me and cannot have family members join them in the United States because of the current refugee restrictions.
15. I know that if the class is certified I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all suffering due to the unfair restrictions imposed by this Proclamation.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Encino, CA on November 5, 2019.

[redacted]

"Jane Doe"

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

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Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF JANE DOE #3 IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Declaration of "Jane Doe"

I, "Jane Doe", upon my personal knowledge, hereby declare as follows:

1. I am a United States citizen who was born in Los Angeles, California, in [redacted].
2. I currently live in Los Angeles, California.
3. I am unable to work due to a disability. Due to my disability, I have subsidized health insurance through Medi-Cal.
4. I have sponsored an immigrant visa application for my husband, so that we may finally live together here in the United States. We expect the Consulate to schedule an immigrant interview within the next few months.
5. My husband is a German citizen who currently lives in Berlin, Germany. Trained as an architect, my husband teaches architectural theory.
6. I first met my husband when he was in Los Angeles for a prestigious artist-in-residence program in 2006. After he returned to Germany, we had an off and on relationship until 2012. After we reconnected again a few years ago, we knew we wanted to be married. My husband and I were married in Los Angeles in February of 2018.
7. My husband and I decided that we would live together in the United States rather than Germany. My desire to stay in the Los Angeles area is very strong. I am very close to my immediate family. I live on the same property as my brother, his wife, and their two children, and the rest of my immediate family lives nearby. My grandmother, who is a Holocaust survivor, is still living, and as long as she living I want to be nearby.
8. I applied for my husband to come to the United States in July 2018. USCIS approved my Form I-130 family-based petition in April 2019.
9. Since then, my husband and I have been working to gather the documents required for consular processing. Several times, we thought we had all of the paperwork submitted, but the government then requests additional, and different information from us.
10. Although I knew the immigration process would be difficult and require patience, I have been very discouraged by the October 4 Presidential Proclamation. I don't

feel hopeful because, although we are self-sufficient, I do not believe we will be able to meet the new requirements of the Presidential Proclamation.

11. I do not know how we would be able to prove at a consular interview that my husband would be covered by approved health insurance within 30 days of his entry into the United States. At the time of the consular interview, his entry date will be at an unknown date in the future. I know that he cannot be added to my Medi-Cal health insurance. Even if he were able to obtain health insurance through an employer in the United States, I do not see how we could prove that at a consular interview. My husband speaks English and German fluently, so his employment prospects in Los Angeles are good, but it is hard to have a plan for employment when we don't know when he will be permitted a green card. How can he apply for a job in the United States when he does not know when he will enter? How can he possibly prove that he will be insured within 30 days of entry when he does not know when he will enter?

12. Neither my husband nor I have the financial resources to afford health insurance, in the short-term at least, for my husband or to pay his foreseeable medical expenses out of pocket. My husband has multiple sclerosis, and his treatments are expensive.

13. My husband currently has German health insurance coverage that covers the cost of his treatments. Through investigation, we have learned that he will be unable to receive that coverage if he emigrates to the US. When my husband has visited the United States, he has purchased traveler's insurance. It is our understanding that he is not eligible for that insurance if he is moving to the United States, not just visiting.

14. It is my understanding that Medicare is not an option for health insurance for my husband because he is not over 65 years old and because he has not been living in the United States continuously for five years. Because I have never served in the U.S. military, TRICARE is not an option for us. I understand that short term limited duration plans are not legal in California. My husband has no other family members in the United States who could add them to their health insurance plans.

15. I have already been living apart from my husband for almost two years. Being married and living in different countries has been miserable. Living apart is a true hardship. We miss each other so very much. Although we talk often, it is no substitute for being together, and we rarely get to see one another. We have to incur travel expenses when one of us visits the other. I have had to go into debt to see my husband.
16. It is depressing and a struggle every day to be apart and missing each other. It's even worse when we cannot be together for holidays and special occasions. Thanksgiving is my favorite holiday, and my husband will not be here to celebrate with me and his new family. Our anniversary is at the end of February, and it looks like we will be apart for that as well.
17. I am also so sad that my husband cannot join me at family events. My family is very close, and we gather for family events at least once a month. My husband is missing out on all of these family events.
18. Because he is not here, my husband cannot join me on visits to see my grandmother. He and my grandmother speaks German together. No one else in my immediate family speaks German. My husband would be able to talk with her if he were here. My grandmother and my husband are both so important to me, and it breaks my heart to think that he may miss the chance to get to spend time with her. She is 96 years old.
19. Having my husband living with me in the United States would be helpful in every possible way. My disability makes it difficult for me to keep up with household tasks, and having my husband's help would make my life much better. For example, although I can wash dishes and clean my house, I cannot keep up with these chores on my own due to my disability. My husband would also contribute to our household financially. He has already started looking at job postings in Los Angeles, and he is eager to begin working. Moreover, because we would be living near my family, my husband and family would be able to get to know each other better. Mostly, though, I am looking forward to living together in the United States because we are in love. Being together would make me so happy.

20. We talk about what it will be like to live together all of the time. We enjoy each other's company so much, and we are so excited to be together. I feel more myself when I am with him, and that makes it all the more devastating to be apart.
21. My husband and I started this process more than a year ago, and I feel like the Presidential Proclamation is an unexpected and absurd change in the rules. I think the Presidential Proclamation means that unless you are rich, you cannot come into this country. The Proclamation feels like it is imposing an impossible hurdle. We thought we had already demonstrated that we had sufficient financial resources through the affidavit of support, but now we are being asked to prove even more. It is impossible to expect us to prove that he will be insured within thirty days of his entry when we do not even know when he will enter, so really the Proclamation requires us to show that we can pay his medical expenses out of pocket. Who can do that in the United States except the rich?
22. If we were Danish, or French, or Polish, we could be together with no problem. But because I am an American and he is not, we cannot be together. It is so upsetting that I try not to think about it.
23. I am willing to serve as a class representative on behalf of those who are similarly situated to me and cannot have family members join them in the United States because of the Presidential Proclamation.
24. I know that if the class is certified I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all suffering due to the unfair Presidential Proclamation.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Los Angeles, CA on November 5, 2019.

"Jane Doe"

EXHIBIT 5

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF GABINO SORIANO CASTELLANOS IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Declaration of Gabino Soriano Castellanos

I, Gabino Soriano Castellanos, upon my personal knowledge, hereby declare as follows:

1. I am a citizen of Mexico.

2. I am married to Brenda Aniza Villarruel, a U.S. citizen.

3. I currently live in Mexico City, Mexico while I await my Immigrant Visa interview.

4. I am a professional tattoo artist. I hold a certificate in professional drawing from the School of the Art Institute of Chicago. My wife and I opened [redacted], in East Chicago, Indiana in June 2016. I am the known artist at [redacted]. My wife works part-time as a piercer and tattoo artist with one (1) other artist in my absence awaiting my return to the United States.

5. In addition to working part-time at the parlor, Brenda works part time as a medical assistant for [redacted]. She does not have employer-provided health insurance. She does not have a general doctor. She uses the services of Aunt Martha's Health & Wellness Program for reproductive health needs. They offer sliding scale clinic services based on income. Every time she goes to the clinic, she pays only $20.

6. Brenda sponsored an immigrant visa application for me and I have been waiting in Mexico to return to reunite with Brenda and my stepson, [redacted] Brenda and I have been a couple since 2009 and married in 2016. I have been in Mexico since March 9, 2018.

7. Brenda petitioned for me to legalize my status on or around July 1, 2016. The I-130 petition was approved on or around September 6, 2016.

8. Since then, I have attended an initial IV interview at Ciudad Juarez on March 27, 2018. My visa was refused and we filed an I-601, Application for Waiver of Grounds of Inadmissibility on December 17, 2018. It was approved on August 20, 2019 and I was scheduled to attend my IV interview on November 5, 2019 at 8:45 a.m.

9. However, after we considered the Proclamation and researched all the approved health insurance plans, we requested to postpone the interview. Every approved plan is either not available to my wife and I or unaffordable and would remain so due to our family's current financial situation. For example, we cannot afford visitor insurance or short-term disability plans and we are not eligible for other plans such as Medicare.

10. On or about October 30, 2019 I was told via the visa scheduling phone system for Ciudad Juarez that I could cancel my interview or reschedule my interview, however, there were not any available future interview dates to reschedule the interview. I was informed I would need to call back to check for dates at a later time. We are hoping that I will be able to reschedule my interview in the next few months. I have already been living apart from my wife and stepson for one (1) year and nine (9) months, and the separation has been exceptionally painful. I can only communicate with my wife through phone on a limited basis due to her work and family obligations. As I mentioned, I am a professional tattoo artist and I am the "main attraction" as an artist. I am known specifically for my black and grey and traditional tattooing styles. Although some of our customers have gone to other artists due to the long wait for my return, we still have approximately 100 confirmed customers waiting to be specifically tattooed by me. I do not know how much longer Brenda will be able to keep the business going.

11. When I learned that our separation will be prolonged indefinitely, I felt absolutely devastated and that we are finally going to be wiped out financially. I cannot think we can keep a tattoo business open without my presence.

12. My stepson, [redacted], is extremely depressed. I have been the only father figure [redacted] has ever had. [redacted] was only four (4) years old when Brenda and I met. He asks for me constantly. This additional delay has left him feeling hopeless and in despair. I am extremely concerned for him as he is a young man in his high school years and is in need of a positive male role model who is able to help him in a way that his grandfather, whom he lives with, is no longer physically able to.

13. My wife is a United States Citizen by birth. Her parents are originally from Mexico. Her mother became a United States citizen before she and her three (3) siblings were born. Her dad became a lawful permanent resident on the day she was born, [redacted] and became a U.S. citizen when she was in high school.

14. I am willing to serve as a class representative on behalf of those who are similarly situated to me and cannot join their family members in the United States because of the current restrictions on immigrant visa admissions due to lack of health insurance.

15. I know that if the class is certified I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all suffering due to

the unfair restrictions on immigrant visa admissions due to lack of health insurance imposed by this administration.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Mexico City, Mexico on November 6, 2019.

Gabino Soriano Castellanos

EXHIBIT 6

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF IRIS ANGELINA CASTRO IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Declaration of Iris Angelina Castro

I, Iris Angelina Castro, upon my personal knowledge, hereby declare as follows:

1. I am a United States citizen.
2. I currently live in Springfield, Massachusetts with my U.S. citizen son. I recently became unemployed.
3. I currently have state health insurance. I have MassHealth subsidized insurance and also BMC Healthnet Plan Mercy Alliance.
4. I have sponsored an immigrant visa application(s) for my husband, [redacted] so that I can reunite with him here.
5. My husband is a national of the Dominican Republic and currently resides there. He has never been to the United States and therefore did not require a waiver.
6. I married my husband in the Dominican Republic on May 24, 2018.
7. I applied for my husband to come to the United States on November 14, 2018. The Form I-130 was approved on May 30, 2019.
8. Since then, I am in the process of filing all of the necessary documents with the NVC so that we can be scheduled for an interview. The consulate in the Dominican Republic is pretty quick to schedule an interview once they have received all of the necessary documentation. I hope to submit everything to the NVC within the next two weeks.
9. Recently I received news of the October 4 Presidential Proclamation detailing the ban on their entry unless my husband will be covered by approved health insurance within 30 days of the alien's entry into the United States, or unless the alien possesses the financial resources to pay for reasonably foreseeable medical costs.
10. This news is devastating because I am currently unemployed. Several weeks ago I was employed as a teacher; however, my son became very ill and I was required to stay home with him. I was forced to quit my job and I lost all of my benefits. Because I am unable to work, I have no source of income and no money to be able to show that we can afford private health insurance for my husband.

11. When I heard of the news of the new regulation, I made attempts to contact various private insurance agencies. I was quoted $248 a month for basic coverage. However, my husband would still need to pay approximately 40% of the cost for each doctor's visits. This plan was not for full coverage. Even at a price of $248.00 a month, I still cannot afford this insurance because I do not have a source of income. I also cannot afford visitor insurance or short term disability plans and we are not eligible for other plans such as Medicare, Tricare. There is nothing we can do to fall within the Proclamation.
12. I also need my husband here with me to alleviate my current financial situation and assist with my pregnancy. It's not right to live as a separated family and my child will suffer harm that can never be undone if my husband remains separated from us. My husband could work if he entered the United States with his green card.
13. I feel lost and overwhelmed. I need my husband in the United States to work so that I can stay home and care for our children. Unfortunately, without him, I am forced to have to use public benefits as my only way to survive. If he were allowed to come to the United States, my financial crisis would be significantly alleviated and we have the ability to live without the need for benefits and public assistance one day.
14. This is a time in which my husband and I should be celebrating our marriage and the birth of our daughter but instead we are being forced to live apart. Our lives are on hold.
15. I am willing to serve as a class representative on behalf of those who are similarly situated to me and cannot have family members join them in the United States because of the current restrictions.
16. I know that if the class is certified I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all suffering due to the unfair restrictions on admissions imposed by this Administration.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at _____ on November 4, 2019.

Iris A Castro

Iris Angelina Castro

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF JUAN RAMON MORALES IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Declaration of Juan Ramon Morales

I, Juan Ramon Morales, upon my personal knowledge, hereby declare as follows:

1. I am a United States citizen, born in Brooklyn, NY on [redacted]. I am not a veteran of the armed services.
2. I currently live in Liberty, NY and with my wife, [redacted], my daughter [redacted] and my step-daughter [redacted]. I work as [redacted] in Ferndale, NY and my wife [redacted] works as a [redacted] in Liberty, NY. My family's average net annual household income is approximately $47,000.
3. I currently have a catastrophic health insurance plan through my employer, which I originally enrolled in to avoid having to pay a penalty for not having health insurance under the Affordable Care Act. This plan has a very high deductible and does not cover much in terms of medical care. I have kept the plan because it will at least provide some coverage for emergencies and it is otherwise the most affordable option my employer offers. Separately, [redacted] and I carry medical debt in the amount of $950 with a monthly payment of $69.
4. My daughter [redacted] who is a US citizen, and my step-daughter [redacted] a lawful permanent resident, both have a subsidized health insurance that costs approximately $15/month.
5. My wife, [redacted] a national of Mexico, does not have health insurance, nor would be allowed to obtain insurance through her current employer. I have asked my employer to add her as a dependent to my plan, but my employer told me that she is not eligible to be added because she does not have a Social Security Number. My employer told me that once she has a Social Security Number, she can be added to my catastrophic health plan, but my employer has not provided me any written documentation regarding the costs and guaranteeing that they can add her to my plan within 30 days of her providing a Social Security Number. There is nothing in the paperwork I received when I enrolled in the plan guaranteeing that a family member will have effective coverage within 30 days of presenting a Social Security Number and be automatically eligible to enroll.

6. Based on my conversations with my employer and research I have done, it is also highly likely that we will not be able to afford the additional costs necessary to add Vianca to my catastrophic plan and, if so, we could afford the additional costs to do so because of her prior medical history.
7. I have read what is considered approved health insurance under the President's Proclamation and the plans are either not available to [redacted] and I or unaffordable due to our current financial situation. For example, [redacted] cannot obtain a visitor plan because she is present in the United States and we are not eligible for TRICARE or Medicare. Because of her prior illnesses, most options outside of subsidized insurance under the Affordable Care Act remain unavailable to [redacted]
8. [redacted] has lived in the United States since 2006. We met that same year in Liberty and began dating and fell in love almost immediately. We have been inseparable since then. We married in 2013.
9. In 2010, [redacted] was diagnosed with leukemia, and had to have an emergency brain surgery. She also has epilepsy and has suffered in the past from seizures. Those are under control because she faithfully takes her prescribed medications, Keppra for the seizures, and Gabapentin for the headaches, for which she pays out-of-pocket approximately $45/month. If she obtained an immigrant visa and held status as a lawful permanent resident she would be eligible to receive subsidized care and better treatment to make sure she remains healthy.
10. Perhaps our greatest joy was the birth of our daughter [redacted] in [redacted]. After nearly losing [redacted] in 2010 to her illness, I believed that God gave us a new purpose with [redacted] and she and [redacted] mean the world to us both.
11. In January 2017, I filed an I-130 petition to qualify [redacted] as my spouse, so she can apply for an immigrant visa. This was approved in July 2017. However, because [redacted] entered the United States without inspection, under the current law she cannot apply for a Green Card from within the United States and will have to process her immigrant visa at the US consulate in Ciudad Juarez, Mexico. Because she has accumulated more than one year of unlawful presence in the United States since her entry, she would be subject to a 10-year bar to returning.

In May 2018, she filed an I-601A provisional unlawful presence waiver application to overcome that eventual 10-year bar. The waiver is based on the extreme hardship that I would suffer if she was not allowed to obtain permanent residence. The I-601A process allowed [redacted] to file and await approval of this application from within the United States as a way to minimize the time I would be separated from her. The I-601A application was approved in April 2019.

12. Since then, [redacted] has completed all other required steps of the Consular Process and our family is now waiting for her interview to be scheduled in Ciudad Juarez, Mexico.

13. [redacted] and I were awaiting the interview when we received news of the October 4 Presidential Proclamation detailing the ban on [redacted] re-entry as an immigrant unless she will be covered by approved health insurance within 30 days of the her entry into the United States, or unless she possesses the financial resources to pay for reasonably foreseeable medical costs.

14. Based on what I have learned from my employer and my own online research, I do not believe that [redacted] will be able to show that she has health insurance at the time of her immigrant visa interview, or that she will have health insurance within 30 days of coming to the United States with a Green Card. I understand that even with successful applications, Green Cards and Social Security numbers are not always mailed quickly after a permanent resident's arrival in the United States.

15. In addition, given her past health issues, even though she is currently in good health and is able to pay for all her current medications, I do not believe that [redacted] will be able to show that she will be able to pay for all her future medical costs at the time of her immigrant visa interview.

16. If her visa was refused or delayed for any time, she would not be able to refill her prescription; she has no place to live in Mexico; she would lose her job in the United States; and we would be financially ruined because our family relies on her income. Moreover, the refusal of her visa will lead to the revocation of her I-601A hardship waiver, which would make her inadmissible to the United States for 10 years.

17. Because of the lack of any notice and the overall uncertainty about what kind of proof would be sufficient to convince a consular officer, I believe that if [redacted] leaves the United States for her consular interview, she will be banned from reentering under the Proclamation due to lack of approved health insurance and inability to have financial resources to pay for medical costs.
18. As part of [redacted] I-601A application, we proved that I would suffer extreme hardship if [redacted] immigrant visa application is not approved. We included a lot of evidence of the extreme psychological, emotional, financial and physical hardship I and my family would suffer if she is denied permanent residence. This whole green card process has taken many years so far, and brought up a lot of pain for me to envision raising our daughters alone and being separated from the love of my life.
19. As the spouse of an undocumented immigrant, I have experienced firsthand the stress of not knowing if I may come home from work one day to find my wife has disappeared. I have experienced the disadvantage of not having my wife be able to drive because she cannot have a driver license. My wife has been the victim of scams and attempted scams, including frightening phone calls from people demanding money and threatening to call the immigration police if we did not pay. Most frightening has been the worry that if my spouse's medical condition somehow worsens, she could not obtain appropriate medical care because of her status. With the approval of the I-601A, we believed we were on the cusp of finally putting behind us a very challenging episode in our lives.
20. I understand that under the new Proclamation I could be indefinitely unable to reunite with [redacted] after she goes to Mexico to process her visa at the consulate. We are in a terrible bind right now. If we do not continue with the consular process, we risk losing all the work we have done over the last several years to get to this point. If we do continue with the process, there is a real risk that [redacted] visa will be denied and she will be stuck in Mexico without me or our children. It is as if we are re-living the extreme hardship all over again – I know that I could not live in Mexico with my daughters because of the violence and poverty there, and I do not know where our family could all be together that is safe and where

we could live without fear and despair. If we are separated, I will be not only heartbroken but worried sick about [redacted] and her health and safety – I do not know if she will have access to her life-saving medications in Mexico, and if she does, if we will be able to afford them. I am also worried about our daughters, who are very attached to their mother and may want to be with her no matter where she is. They will be confused and devastated if their mother is taken away from them. And yet we cannot have them live in Mexico where they would be without a home, educational opportunities and where they would be certain to live in poverty and subjected to constant threats of violence.

21. When I learned that we could very well suffer this indefinite separation, I felt tremendous anxiety and despair, particularly given the whole process we have already been through. We have not told our children yet about this new Proclamation because we do not want them to worry about being separated from their mother.

22. I am willing to serve as a class representative on behalf of those who are similarly situated to me and cannot have family members join them in the United States because of this Proclamation.

23. I know that if the class is certified I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all suffering due to the President's Proclamation.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Liberty, NY on November 5, 2019.

Juan Ramon Morales

EXHIBIT 8

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF DULCE YANELI RAMOS IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Declaration of Dulce Yaneli Ramos

I, Dulce Yanelis Ramos, upon my personal knowledge, hereby declare as follows:

1. I am a United States citizen. I was born in Fort Lauderdale, Florida on [redacted]
2. I currently live in Fort Myers, Florida, with my husband, John Doe, and our two small children, ages [redacted]
3. My children and I have subsidized Florida Blue insurance through the Affordable Care Act.
4. My husband is the main provider for our home. He works in construction as a foreman.
5. My husband does not currently qualify for health insurance, as he does not have a social security number.
6. I work as an office assistant for the same construction company my husband works for.
7. Our annual household income is about $50,000.
8. I filed an I-130, Immigrant Petition for Alien Relative, on behalf of my husband on June 26, 2017.
9. The petition was approved on February 20, 2018.
10. Once the petition was approved, my husband filed an I-601A provisional waiver, which, if approved, would forgive his unlawful presence in the United States and allow him to obtain lawful permanent residence status at the U.S. Consulate in Guatemala.
11. Fortunately, USCIS approved his waiver was approved on January 17, 2019.

12. We were in the process of gathering all the documents required by the consulate when we received news of the October 4 Presidential Proclamation detailing the ban on foreign nationals entering the United States unless they can prove that they will be covered by approved health insurance within 30 days of the person's entry into the United States, or unless the person possesses the financial resources to pay for reasonably foreseeable medical costs.

13. My husband's current employer can only afford to open their insurance enrollment period in the month of September, which means that it would nearly impossible for my husband to be able to prove that he will be enrolled in health insurance within 30 days of arriving in the United States as a lawful permanent resident.

14. For him to be able to prove this his interview at the consulate would have to be scheduled for August or very early in September, a date the foreign national does not get to choose.

15. We live pay check to pay check, so we cannot afford private, unsubsidized health insurance for my husband.

16. My husband and I are really concerned about his immigrant visa being denied at the interview for his lack of evidence of insurance coverage. If that happens, the already approved I-601A provisional waiver would be automatically revoked, and he would need to file a new waiver.

17. I have looked at the approved insurance plans under the Proclamation and my husband and I would not be able to obtain any approved plans within 30 days of his entry because we live check-to-check. The approved plans would cost us at least $300 a month, just for my husband, and we cannot afford that.

18. I understand the new waiver would take years to be processed by USCIS.

19. We do not have years to wait.

20. We have 2 (almost 3) children to raise and support.

21. If my husband is not allowed to return to the U.S., our family would lose our main financial and emotional provider.

22. Even if the new waiver is eventually approved, we would not be able to afford health insurance for him, as it's uncertain whether his current employer would keep his position open for him for years, and our family depends on my husband's income to survive, which we will not have if he has to stay in Guatemala indefinitely.

23. His job is not one that can be done "remotely" or "online." He is a foreman; that is his trade.

24. I understand that under the new Proclamation, it's very likely that I could be indefinitely separated from my husband.

25. When I learned that our separation could be prolonged indefinitely, I felt demobilized and heartbroken. We have young children that adore and need their father. This separation would destroy them.

26. This has caused me and my family considerable anxiety and stress.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Fort Myers, Florida.

Dulce Yaneli Ramos 10/29/2019

EXHIBIT 9

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

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Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF DANIEL E. RHOADS IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Declaration of Daniel E. Rhoads

I, Daniel E. Rhoads, upon my personal knowledge, state as follows:

1. I am a United States citizen, born in Richmond, Virginia, on [redacted] I am not a veteran of the Armed Services.

2. I currently live in Barcelona, Spain with my wife, [redacted] is an Italian citizen, born [redacted] in Rome, Italy.

3. We were married August 7, 2017 in Richmond, Virginia. At the time of our marriage, we were living, working, and attending university in Barcelona, Spain. After our marriage in Richmond, we returned to Barcelona to allow [redacted] to complete her Ph.D. in Technology with a focus on Materials Science from the University of Girona (Spain). She has completed and deposited her doctoral thesis and is expected to have her Ph.D. conferred by the end of November 2019.

4. I am currently working at the [redacted] in Barcelona as a researcher. I am also pursuing a PhD in Information Technology at this university. I hold a Bachelor's degree from Virginia Commonwealth University (2015) in Richmond, Virginia, and a Master's degree in Geographic Information Systems from the Universitat Autonoma de Barcelona (2017).

5. [redacted] and I wish to move to the United States to pursue our careers and to build our life together. In order for [redacted] to join me in the United States, we have to obtain an "immigrant visa" for her from the US embassy in Madrid Spain.

6. Obtaining an immigrant visa is a complicated and stressful process. As the first step in the process, I filed an I-130 Petition for Alien Relative with the United States Citizenship & Immigration Services on October 27, 2017. This was approved on May 2, 2018.

7. We then had to submit significant documentation to the National Visa Center in the United States regarding [redacted] background, including her family history, employment history, immigration history, and certification from Italian and Spanish police that she had no criminal background, and records and financial documentation to prove that [redacted] will not become a "public charge." The filing we had to make with the National Visa Center included confirmation that we have sufficient financial resources available to us that, if [redacted] ever obtains certain means-tested public benefits in the United States, including long-term healthcare at a public facility, the government will be reimbursed the full cost of the public benefit.

8. The financial documentation we submitted included transcripts of my U.S. tax returns, and an Affidavit of Support filed by me confirming that I am responsible for any means-tested public benefits she receives for a period of 10 years. Because we do not currently live in the United States, we submitted a second Affidavit of Support from a joint

sponsor, providing additional assurance that, if [redacted] receives means-tested public benefits, the government will be reimbursed for the cost.

9. We completed and submitted everything required by law to the National Visa Center, and we are now waiting for an interview date with the U.S. Embassy in Madrid, Spain to obtain the immigrant visa.

10. We are planning to move to the United States in the summer of 2020, after I complete my Ph.D. We do not yet have employment in the United States. We plan to pursue employment opportunities in fields related to our advanced degrees after we move to the United States and are available for job interviews. [redacted] is seeking employment as a post-doctoral researcher in the field of materials chemistry, or alternatively an analytical chemist working for a private firm. I will be seeking employment as a researcher in the field of network and data science, or alternatively as a data analyst or computer programmer for a private firm.

11. [redacted] and I are both educated in fields that provide many opportunities for employment, and we fully anticipate finding employment. However, at the time we move to the United States, we will not have employment and we will not have employer-provided health insurance.

12. We have now learned of a brand new obstacle which may prevent us from being able to move to the United States as a married couple. On October 4, 2019, President Donald Trump issued a "Proclamation" requiring that anyone applying for an immigrant visa to enter the United States must show either (a) that he or she will be covered by health insurance within 30 days of entry, with proof of specific health insurance plans and the date the coverage will begin; or (b) that we have financial resources to pay for reasonably foreseeable medical costs.

13. We have no reasonable way to comply with this requirement. Up to this point, we have carefully complied with all requirements to allow me to move to the United States with my wife, including providing guarantees by two people (me and my joint sponsor) that if [redacted] obtains means-tested benefits funded by the government, the government will be reimbursed. This new health insurance requirement may force me to have to abandon my plans to return to the United States, my country of birth, to remain in Europe so that I will not be separated from my wife.

14. The Proclamation gives us no guidance regarding what we need to provide at the consular interview to prove that we have health insurance or financial resources to pay for reasonably foreseeable medical costs. Neither of us has any medical conditions. We are both under 30 and healthy.

15. After moving to the United States, we certainly plan on having health insurance. But we have no reasonable way of knowing or proving that it will be within 30 days. In addition, obtaining health insurance may involve a Healthcare Marketplace Plan to

which we would both be legally entitled when we arrive in the U.S., but which this Proclamation would prevent. It may also be through an employer who hires us after we enter the U.S. These are details we cannot reasonably provide before arriving in the United States.

16. Because we have already confirmed through Affidavits of Support that any public benefits received by [redacted] will be reimbursed, this new Proclamation seems wasteful and can only serve to prohibit entry to the U.S. of people like me and my wife who are in the early stages of starting our careers in technology fields that are important and beneficial to the United States.

17. I am willing to serve as a class representative on behalf of others who will not be able to have spouses or other family members join them in the United States because of this Proclamation.

18. I know that if the class is certified I will be representing more than just myself in this case.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Executed in Barcelona, Spain on November 6, 2019.

Daniel E. Rhoads

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EXHIBIT 10

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF MS. CARMEN RUBIO IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Declaration of Ms. Carmen Rubio

I, Carmen Rubio, declare as follows:

1. I am the Executive Director of Latino Network ("LatNet" or "organization"), in Portland, Oregon. The information in this declaration is based on my personal knowledge and on data that LatNet maintains in its ordinary course of business. As Executive Director, I am responsible for leading our Latino-led education organization, which is grounded in culturally specific practices and services and which lifts up youth and families to reach their full potential. I joined Latino Network as the Executive Director in 2009. Previously, I served on staff for former Multnomah County Commissioner Serena Cruz Walsh, former Portland Mayor Tom Potter, and Portland City Commissioner Nick Fish. I currently serve on the boards of the Oregon Shakespeare Festival, Coalition of Communities of Color and the University of Oregon Alumni Association. I also serve as an appointed Commissioner on the State of Oregon's Higher Education Coordinating Commission. I am a 2015 Marshall Memorial Fellow, an American Leadership Forum of Oregon Fellow, and a member of the International Women's Forum.

2. LatNet was founded in 1996 by community leaders concerned about the lack of adequate resources to meet the needs of the growing Latino community in Portland and the surrounding area. Since then, we have evolved to become an organization that also provides transformational programs aimed at educating and empowering Multnomah County Latinos. Low achievement scores, unavailability of adequate health services, youth violence, and high drop-out rates undermine the Latino community's potential. We address these issues with programs and outreach efforts to promote early literacy, encourage parent involvement, work with gang-involved and adjudicated youth and families, and provide academic support and activities to high-school-aged youth. One of the largest challenges facing our community is the

devastating affects that flow from the separation of families due to immigration-related obstacles. Through LatNet's community partnerships, we have been able to guide our members and their families to available health- and job-related services to assist them become self-sufficient as soon as possible. Through our work, we build local youth and adults' leadership skills, positively transform the lives of Latino youth and families, and strengthen these vulnerable communities. Our programs foster united, healthy and strong families thereby lifting up our community.

3. Like other human-rights organizations, LatNet recognizes the monumental importance that family unity plays in an individual's social development and economic integration. Government efforts to prevent individuals from reuniting with children, spouses, parents, and siblings are fundamentally at odds with our mission and values. Likewise, availability of, and access to, health-related benefits plays a vital role in youth educational development and is essential for newly arrived immigrant families.

4. Today, LatNet addresses its mission to positively transform the lives of Latino youth, families and communities through educational and advocacy programs aimed at helping the Latino community in three key areas. LatNet is dedicated to helping Latino youth and parents: (1) live with dignity and develop social support; (2) sustain physical and mental health; and (3) achieve housing and financial stability.

5. LatNet fulfills its mission by offering various programs and services, including Early Childhood Services, Community-Based Programs, School-Based Programs, Arts & Culture Youth Programs, Health and Wellness Programs, and Civic Leadership Programs. Each of these programs and services are built around the goal of helping our participants become self-sufficient, healthy, and productive members of society. For example, LatNet's health and

wellness programs for our youth members work to eliminate stigma associated with mental illness, sexual orientation, and teen pregnancy, as well as increase conversations around health and sexuality. Together these programs carve out a space for dialogue, strengthen family communication, and broaden the spectrum of public services in our county. Our Community Healing Initiative ("CHI") engages at-risk and gang-involved youth and their family members to reduce violence and involvement in the juvenile justice system. CHI mentors, case managers, and parent engagement workers work to support entire families as they overcome systemic barriers, build on strengths, and set and achieve goals.

6. Support for immigration and successful integration of immigrants into our community represent fundamental principles of our organization. Many of our members are newly arriving immigrants, recently arrived immigrants, or are in the process of sponsoring their family members, many overseas, for immigrant visas. LatNet staff includes an Immigration Navigator who educates clients and connects them to legal service providers to assist with family reunification applications through the immigrant visa process.

7. LatNet staff also assists community members and their families in navigating employment services (assessment, job readiness, employment counseling, job placement, and retention), language classes, and other social services, including green card and citizenship applications, healthcare, short-term financial assistance, and other benefit services.

8. I am familiar with the "Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System" (the "Proclamation"). It is my understanding that the Proclamation bans otherwise qualified immigrant visa applicants from receiving visas and entering the United States unless they can establish, "to the satisfaction of a consular officer," that they either "will be covered by approved

health insurance" within 30 days after entry or are wealthy enough "to pay for reasonably foreseeable medical costs." It is my understanding that the Proclamation seeks to further restrict the ability of applicants to obtain an immigrant visa by excluding any federal or state means-tested health insurance benefits, such as tax credits under the Affordable Care Act ("ACA") or coverage under Medicaid or the Children's Health Insurance Program ("CHIP") from the definition of approved health insurance.

9. Because of the Proclamation, many LatNet members have expressed a fear that they will never be reunited with their family members abroad, many of whom live in dangerous and life-threatening situations.

10. Many of LatNet's clients have increasingly become concerned about sharing the details of their situations publicly, for fear that it could affect their immigration status or applications, or those of their relatives.

11. For example, our Immigration Navigator recently spent two and half hours in a telephone conversation with a client, "J1". J1 is a naturalized American citizen, married with two children. One of her children requires special care. J1 has a job that allows her to cover the basic needs of her family, but there is no extra money left after covering monthly family expenses. J1 has waited for more than 10 years to be reunited with her oldest sister, who is preparing to immigrate to the US through a family-based petition that has finally been approved. J1 is worried that after waiting for so many years for the possibility of reunifying permanently with her sister, that opportunity will disappear because none of them could prove to a consular office, at the moment of the upcoming consular interview, that they have the money to pay for medical insurance. The possibility that her sister's permanent residence application could now be denied not only affects J1, but also affects other members of her family. J1's parents are

permanent residents of the United States and live in Portland, Oregon. They are an elderly couple. Together they have created a strong and united family atmosphere and hope that their eldest daughter can join them here through J1's immigration petition; however, this new Proclamation has caused them undue trauma, stress and anxiety because they don't know if their eldest daughter will ever have the opportunity to live close to them permanently. In this case, the Navigator, after hearing J1's worries, sadness and frustration, responded by providing her with emotional support and directing her to resources where she could review different medical insurance plan options.

12. The function of LatNet's Immigration Navigator is to assist community members in finding the appropriate legal services. The populations that our Navigator serves are mainly immigrants and their families who are low-income, have few financial resources, and who view our organization as a reliable source of information for their families. Since October 4, our Navigator has experienced an increase in the number of individual consultations with members of our community who are concerned about how the implementation of the Proclamation will affect their ability to obtain health insurance and to sponsor family members in the process of applying for an immigrant visa to reunite their families. During those consultations, our Navigator has encountered great confusion, concern, and despair, since many family-based petitioners have many questions about what is considered acceptable as "financial resources for foreseeable medical cost" and concerns that they may never be reunited with their family members abroad.

13. Our Immigration Navigator has reported that there is increased fear among members of our community that believe that this new measure will prevent them from ever being reunited with their loved ones because they do not have the resources to pay for private medical

insurance. This crisis has forced our Immigration Navigator to divert a large percentage of his primary responsibility away from assisting families find cost-effective immigration-related legal services and toward a new role as a consultant about the Proclamation and how families can cope with its consequences or try and meet its requirements. This represents a new and unforeseen workload for our Immigration Navigator, and he has had to deviate from the core responsibilities included in his job description such as the planning and development of educational workshops for the community focused on immigration legal services, or meeting with clients to find legal advice at low cost. He has had to postpone individual service intake interviews with clients who are eligible for legal representation and also has had to reschedule meetings with community partners with whom he meets continuously to promote the well-being of Latino students and their families. Our Navigator has also invested many hours to conduct research on the different medical insurance alternatives that could be approved under the Proclamation and that could be accessible to our community. He has had to adopt a new role and quickly attempt to learn about the complicated system of medical insurance companies, which is far outside of the regular scope of his work.

14. Another example of how LatNet has had to adapt to this crisis is the way in which our Immigration Navigation Program has had to shift its community education efforts. This program has within its original objectives the designing and delivery of workshops to immigrant and refugee communities. Usually during these workshops, the information provided to attendees has educational components so participants can learn about their rights and obligations in the United States. In addition, information about family emergency preparedness and financial literacy is also provided. However, the Proclamation has forced my staff to change the initial focus of the work in these workshops and instead address the questions and fears that the

Proclamation has caused in our community. For example, in a recent community workshop, the facilitator had to modify the content of the original presentation and instead dedicate most of the time to answering questions and concerns from participants related to the Proclamation. Approximately 60 percent of the total time of this workshop was devoted to explaining the difference between the Proclamation and the proposed Public Charge rule, so participants could understand that they are different regulations with different implications. Therefore, a new workshop will have to be scheduled at the same location to meet the original objective of our community education work. Latino Network will have to modify our work plan in this area in order to fulfill the contractual requirements that fund of this area of our services. This will cost us more time and financial resources that were not considered in the original budget. The extra work created by this Proclamation, of course, was not contemplated in our Immigration Navigation Program's planned efforts.

15. The Proclamation targets immigrant families, and thus our organization's efforts to lift up our immigrant families, and we have no choice but to reallocate Latino Network agency resources in order to respond. We have had to assign our Early Childhood Director, a senior member of our executive team, to lead and coordinate our organizational response, which pulls her away from the strategic priorities in her work plan. In order to coordinate our response efforts—including researching the rules, regulations and implications associated with the Proclamation, coordinating our outreach and education plans and developing a staff training strategy so that our front line staff is prepared to respond to community concerns—she has had to postpone critical work on projects that are core to LatNet's mission, including program expansion planning, fundraising for our early childhood programs, and quality and fidelity management of our affiliate partners. Clearly, managing the fallout from the Proclamation is

outside of the normal scope of work of our Early Childhood Director. She should instead be spending her time on the core programmatic functions of her department.

16. This is only the beginning of the impact on our organization, and reflects the harm we have experienced in roughly one month's time. The Proclamation has and will continue to severely restrict and frustrate LatNet's ability to fulfill its organizational mission and carry out our core service approach which includes counseling and referring our low- and moderate-income immigrant clientele to services that will enable them to obtain adequate health-related benefits. Every family separated under the Proclamation makes our effort to promote the well-being of youth through family unity and health that much harder.

17. The Proclamation has forced LatNet to divert significant resources to identify what services members of our community may use to adjust to the new rules, comply with the Proclamation, and remain eligible to sponsor family members for immigrant visas.

18. The vague language of what counts as "approved medical care" has caused and will continue to cause LatNet staff members to spend countless hours trying to research what available federal, state, and private health care plans our members and future immigrants who remain abroad may obtain. The time and expense of this research necessarily takes away from other organizational efforts. We have looked at the approved health insurance and have found that most of our members will not qualify or cannot afford any option. For example, most of our members are not old enough to qualify for Medicare, short-term plans lasting the minimum-required 364 days are not available in Oregon, and TRICARE is only available for certain members of the armed forces.

19. Prior to the Proclamation, we steered members and clients toward subsidized health-plans to meet their needs and family members' needs, when necessary. We now have

some members who asked us whether they should cancel their plans because they fear that it will jeopardize either their own immigration status or their ability to sponsor family members for immigrant visas. The Proclamation has caused a crisis in our community; as an organization dedicated to serving our community, we have been forced to drop other strategic initiatives and respond to this crisis.

20. We have been forced to divert resources to new training and education programs that we felt were necessary to combat the disastrous consequences of the Proclamation for members and their relatives who have or may use a non-approved plan or cannot pay for foreseeable medical costs.

21. At LatNet, we must make every available dollar count by investing in quality assurance and program sustainability and expansion, in order to deliver high quality, effective programs and direct services. This Proclamation has and will continue to squeeze vital resources from our core business and force us to materially shift how we invest our resources and staff time in order to serve our community's needs to adjust to this Proclamation and its effects. We must devote dedicated time and money on training the entire staff on the Proclamation's effects and how immigrant families can navigate its requirements. We do not have such health-based staff in the normal course of business, but to appropriately meet our mission we must now do so.

22. For example, we had planned to invest in training our staff on key components of our program quality improvement model and service delivery initiatives in the next few months. We have stopped that investment as a result of the Proclamation. Instead, the Proclamation and its effects will effectively force us to use these resources and that staff development time to ensure all staff are informed and prepared to respond and support community members in navigating the Proclamation's new rules. As staff and community members continue to bring

new questions and concerns about the Proclamation, this will increasingly take staff away from their core function of delivering critical direct education and non-health related services to clients.

23. In order to respond to the questions and concerns from community members, program participants and partners, we have and will continue to invest considerable staff time to research restrictions and regulations arising from this Proclamation, identify acceptable health insurance options under the new rules, train our direct service staff on the details of the restrictions and acceptable options for families, develop informational materials in multiple languages to inform our community, and field questions and concerns from our participants.

24. Our regular practice is to ensure our front line staff is trained to refer community members to low cost, subsidized, and free health insurance resources, through our local state Medicaid expansion program. Additionally, we were preparing to partner with other statewide organizations to conduct outreach and enrollment in our state health insurance program for immigrant children and their families. This Proclamation has disrupted our core business and forced us to develop new outreach and training programs to respond to these policy changes. This represents a completely new and unanticipated challenge and hardship for our organization and our staff.

25. We estimate that it will cost us $9,784.00 to train all of our staff on the Proclamation's new rules and restrictions. Additionally, we estimate that it will cost LatNet $3,963.00 to conduct the necessary research, develop informational materials for staff and community members, and identify acceptable options for health insurance that would satisfy the Proclamation's terms. These estimated costs, however, do not represent the full extent to which the Proclamation frustrates LatNet's ability to carry out its mission and divert resources. The

estimates, for example, do not account for the likely decrease in service delivery in our vital, direct service programs that will result from diverting staff to address this Proclamation and associated questions and concerns.

26. I am aware of no mechanism in the Proclamation or any federal program by which LatNet could be compensated for lost productivity or increased costs, and many of the expected impacts to LatNet and its clients and even its other programs could not be mitigated financially in any event.

27. Beyond the burdens that the Proclamation places on LatNet's budget, operations, and organizational mission, the Proclamation will undoubtedly require us to divert resources to address inquiries and concerns arising out of its implementation. We estimate that a significant percentage of staff members' time—up to 15% of paid staff members' weekly time during business hours—will be spent responding to client concerns and inquiries in the coming weeks and months as knowledge and fear of the Proclamation grows, and as further future effects materialize.

28. The family separation that this Proclamation intends to cause will strain our resources in other ways as well. Our clients and their families will have fewer income-earning adults in their households, which will exacerbate existing financial and housing issues in our low- and moderate-income immigrant community. LatNet will have greater future demand for our other core services while at the same time having to divert resources from those services to address the Proclamation's more immediate effects for immigrants and their families seeking admission to the United States.

29. Furthermore, the emotional and developmental toll that family separation exacts from our vulnerable community members cannot be overstated. Without the support and

presence of stable, unified families, our community's vulnerable children and youth will face greater obstacles in their efforts to (1) live with dignity and develop social support; (2) sustain physical and mental health; and (3) achieve housing and financial stability. As such, our community and clientele will have greater need than before for our core programs and services, including Early Childhood Services, Community-Based Programs, School-Based Programs, Arts and Culture Youth Programs, Health and Wellness Programs, and Civic Leadership Programs. But because our resources have been and will be diverted to respond to the Proclamation's immediate effects on immigration, LatNet will have fewer resources to devote to that increased need.

30. As such, the Proclamation has caused much more than a mere setback to LatNet's abstract interests. We have experienced and will experience real harm to our capacity to carry out our organization purpose: (a) we have been forced to alter our resource base to respond to and attempt to mitigate the Proclamation's immediate effects; (b) those diverted resources would have been allocated in a balanced manner toward our core services and programs; (c) devoting staff and resources to meeting and assisting affected families with health-care options in light of the Proclamation diminishes our ability to support our education-based and youth-based community outreach and programs; and (d) we have devoted and will necessarily continue to devote time to monitor our membership and educate our community about the Proclamation and its effects.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Portland, Oregon on November 7, 2019.

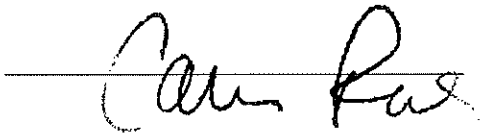

EXHIBIT 11

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF BRENDA VILLARRUEL IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Declaration of Brenda Villarruel

I, Brenda Aniza Villarruel, upon my personal knowledge, hereby declare as follows:

1. I am a United States citizen by birth.

2. I currently live in Chicago, Illinois with my United States citizen biological son, and my United States citizen parents. I work part time as a medical assistant at [redacted]. I earned my Medical Assistant Certificate on August 18, 2012. I have worked for [redacted] since 2013.

3. My husband is a professional tattoo artist. We opened [redacted], in East Chicago, Indiana in June 2016. I work at the parlor to keep the business up and running in his absence. I started piercing professionally in July 2017 and tattooing in July 2018. I presently work at [redacted] with one (1) other artist trying to keep doors open awaiting my husband's return.

4. I do not have employer-provided health insurance. I do not have a general doctor. I use the services of Aunt Martha's Health & Wellness Program for reproductive health. They offer sliding scale clinic services based on income. Every time I go to the clinic, I pay only $20.

5. I have sponsored an immigrant visa application for my husband, Gabino Soriano Castellanos, so that I can reunite with him here.

6. My husband is a national of Mexico, and currently resides in Mexico City, Mexico. I married my husband in 2016. My husband has been in Mexico since March 9, 2018.

7. I applied for my husband to come to the United States on or around July 1, 2016. The I-I30 petition was approved on or around September 6, 2016.

8. Since then, my husband attended an initial IV interview at Ciudad Juarez on March 27, 2018. His visa was refused and we filed an I-601, Application for Waiver of Grounds of Inadmissibility on December 17, 2018. It was approved on August 20, 2019 and my husband was scheduled to attend his IV interview on November 5, 2019 at 8:45 a.m.

9. However, after we considered the Proclamation and researched all the approved health insurance plans, we requested to postpone the interview. Every approved plan is either not available to my husband and I or unaffordable and would remain so due to our family's current financial situation. For example, we cannot afford visitor insurance or short-term disability plans and we are not eligible for other plans such as Medicare.

10. On or about October 30, 2019 my husband was told via phone that he could cancel his interview or reschedule his interview, however, there were not available future interview dates to reschedule the interview and he would have to call back if he wanted to reschedule. We are hoping that he will be able to reschedule his interview in the next few months. I have already been living apart from my husband for one (1) year and nine (9) months, and the separation has been exceptionally painful. I can only communicate with my husband through phone on a limited basis due to work and family obligations. As I mentioned my husband is a professional tattoo artist. He is the "main attraction" as an artist. He is known for his black and grey and traditional tattooing styles and hold a certificate in drawing from The School of the Art Institute of Chicago. Although some of our customers have gone to other artists due to the long wait for his return, we still have approximately 100 confirmed customers waiting to be specifically tattooed by my husband. I do not know how much longer I will be able to keep the business going.

11. When I learned that our separation will be prolonged indefinitely, I felt absolutely devastated and that we are finally going to be wiped out financially. I cannot think we can keep a tattoo business open without the star tattoo artist.

12. My son, [redacted] Gabino's stepson is extremely depressed. Gabino has been the only father figure [redacted] has ever had. [redacted] was only four (4) years old when Gabino and I met. He asks me constantly when Gabino will be back. This additional delay has left him feeling hopeless and in despair.

13. I am American and my parents are originally from Mexico. My mother became a United States citizen before me or my three (3) siblings were born. My dad became a lawful permanent resident on the day I was born, [redacted]. When I was in high school, I helped my dad study for his naturalization test.

14. I am willing to serve as a class representative on behalf of those who are similarly situated to me and cannot have family members join them in the United States because of the current refugee restrictions.

15. I know that if the class is certified I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all suffering due to the unfair restrictions imposed by this Proclamation.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at Chicago, Illinois on November 6, 2019.

Brenda Villarruel

Sworn before me this 6th day of November 2019

Notary Public
Commission Expires: 07/30/2022

KIKI MARIA MOSLEY
Official Seal
Notary Public - State of Illinois
My Commission Expires Jul 30, 2022

EXHIBIT 12

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF LEIGHTON KU IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

DECLARATION OF LEIGHTON KU

I, **Leighton Ku**, declare pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. My name is Leighton Ku. I have personal knowledge of and could testify in Court concerning the following statements of fact.

2. I am a Professor of Health Policy and Management and Director of the Center for Health Policy Research at the Milken Institute School of Public Health, George Washington University in Washington, DC. I have attached my Curriculum Vitae as Exhibit A to this Declaration.

3. I am a nationally-known health policy researcher with over 25 years of experience. I have conducted substantial research about immigrant health, and health care and costs. I have authored or co-authored more than a dozen articles and reports about immigrant health issues, including articles in peer-reviewed journals such as Health Affairs and American Journal of Public Health, as well as scholarly reports published by diverse non-profit organizations including the Social Science Research Network, the Migration Policy Institute, the Cato Institute and the Commonwealth Fund, as well as many more articles and reports on other subjects. I have testified before the U.S. Senate Finance Committee about immigrant health issues and provided analyses and advice to state governments and non-governmental organizations in many states about immigrant health.

4. I have expertise in health and public policy and in quantitative data analysis. I have conducted quantitative analyses for most of my career, including analyses for a federal agency, two think tanks and now at a university. I have taught statistical analysis and research methods at the graduate school level for over 25 years, training hundreds of graduate students. I

have authored or co-authored more than 90 papers in peer-reviewed journals and hundreds of other reports, most of which were quantitative analyses. I have consulted with the Congressional Budget Office and numerous federal and state agencies.

5. I provided expert declarations about the effects of terminating Deferred Action for Childhood Arrivals on health insurance coverage and states in *State of New York, et al. v Trump, et al.*[1] in November 2017 and in *State of Texas v. United States, et al. and Karla Perez, et al.* in June 2018.[2] In September 2019, I provided three versions of an expert declaration regarding public health effects of the Department of Homeland Security's "public charge" rule in *La Clinica de la Raza, et al. v Donald Trump, et al.,* in the U.S. District Court, Northern District of California, *Make the Road, et al. v Kenneth Cucinelli, et al.* and in *State of New York, et al. v U.S. Department of Homeland Security* in the U.S. District Court, Southern District of New York. I have not provided testimony in any other court cases in the past four years.

6. I also have knowledge of health insurance and employment through my role as a voluntary (unpaid, appointed) Executive Board member for the District of Columbia's Health Benefits Exchange Authority, which governs the District's health insurance marketplace, formed under the federal ACA. This includes oversight of health insurance for small businesses as well as individual health insurance in the District of Columbia.

7. I have a PhD. in Health Policy from Boston University (1990) and Master of Public Health and Master of Science degrees from the University of California at Berkeley

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1 Declaration of Leighton Ku in *State of New York, et al. v Donald Trump, et al.* in U.S. District Court for the Eastern District of New York. Nov. 22, 2017.

2 Declaration of Leighton Ku in *State of Texas v. United States of America, et al. and Karla Perez, et al., Defendant-Intervenor* in U.S. District Court for the Southern District of Texas, Brownsville Division, June 14, 2018.

(1979). Prior to becoming a faculty member at George Washington University, I was on the staff of the Urban Institute and the Center on Budget and Policy Priorities.

8. I have been engaged by counsel for the Plaintiffs in this case to evaluate public health issues regarding the Presidential Proclamation of October 4, 2019, *Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System.*[3]

Summary

9. Briefly, my review indicates that the President and the State Department, which is charged with implementing the proclamation, failed to conduct a careful and reasoned analysis of the policy. There is no compelling evidence that uninsured or publicly insured visa applicants pose a serious burden to the American health care system, certainly not one that justifies the urgent adoption of this policy without an appropriate rule-making procedures including notice and comment. Analyses of federal survey data indicate that uninsured recent immigrants are responsible for less than one-tenth of one percent of the total medical costs in the nation and do not create an overwhelming burden for our health system. Analyses of recent Census data suggest that the President's policy could reduce the number of visas approved for legal immigration by more than half, or 293,000 persons per year, because they lack the approved forms of insurance. This represents a massive shift in American immigration policy, made without a reasoned approach to administrative rulemaking. The Administration has failed to carefully consider the ramifications of this policy, which could have serious negative effects on the well-being of the nation and its residents.

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[3] Trump D. *Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System.* The White House. Oct. 4, 2019.

Overview of the Presidential Proclamation

10. The Presidential Proclamation declared that immigrant visas (visas for those applying for permanent residence in the United States), would no longer be approved, with certain exceptions, unless the applicant demonstrated that within 30 days of entering the United States he or she would have an approved form of health insurance coverage, such as employer-sponsored health insurance, Medicare or unsubsidized nongroup insurance plan or, if he or she lacks approved coverage, has "financial resources to pay for reasonably foreseeable medical costs." Health insurance such as Medicaid or tax-subsidized health insurance marketplace plans developed under the Affordable Care Act are not approved forms of health insurance coverage under this policy. Certain immigrants, such as those already approved for entry or unaccompanied children under the age of 18, are excluded. The Proclamation made the policy effective November 3, 2019. It does not apply to those seeking non-immigrant visas for temporary entry to the United States, such as students, temporary workers or tourists.

11. The stated rationale for this proclamation was that uninsured immigrants pose a hazard to the nation because they use uncompensated health care services that create burdens for hospitals, the government and to the public. It asserts that immigrants' use of health care such as emergency services may crowd out care for citizens and other members of the public.

12. I note that the proclamation does not provide any estimates related to the costs of care for those who are recent immigrants, who are the target of the policy. Nor does it explain why health insurance programs like Medicaid or tax-subsidized coverage under health insurance marketplaces formed by the Affordable are not approved forms of health insurance.

13. Finally, it does not provide a rationale for why this is such an urgent problem that it had to be adopted within a month of the date of the proclamation and without standard procedures that apply to federal rule-making, such as the opportunity for notice and comment.

14. On October 30, 2019, the State Department issued an emergency request for public comment[4] about the collection of information about visa applicants' health insurance coverage, requesting that comments be submitted in two days, by November 1, 2019, much shorter than the standard 60 day comment period that pertains to the review of information collection. In the notice, the Department estimated that 450,500 persons per year would be asked about health insurance coverage, but did not estimate how many might be denied visas, nor did it explain how consular officers would assess if applicants had "financial resources to pay for reasonably foreseeable medical costs."

15. On October 30, a coalition of organizations, including the Justice Action Center, Innovation Law Lab and the American Immigration Lawyers Association, filed a complaint challenging the Proclamation. Two days later, they filed a motion for a temporary restraining order. On November 2, 2019, the U.S. District Court for the District of Oregon issued a temporary restraining order, blocked implementation of the rule worldwide, and called for a November 22 hearing to consider a preliminary injunction.[5]

The Weak Basis for the Proclamation and the Lack of Analysis

16. The government presents virtually no analysis justifying its policy or the urgent need for adoption. A good place to begin is: What types of health insurance coverage do visa

[4] U.S. Department of State. Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage. Federal Register, 84(210): 58199-200, Oct. 30, 2019.

[5] United States District Court, District of Oregon. Temporary Restraining Order in John Doe #1, et al. v Donald Trump, et al. Case No. 3:19-cv-01743-SB. November 2, 2019.

applicants have or expect to have soon after arrival? And what is the value of uncompensated care provided to legally admitted immigrants who might have been affected by this policy? Although I have studied data about health insurance, health care and immigrants for many years, I am not aware of any information that accurately answers this question. Indeed, to the best of my knowledge, the first attempt to collect such information is entailed in the State Department's effort to ask about health insurance coverage, although this was not for the purpose of analysis, but for the purpose of denying visa applications.[6] Although the State Department estimated that 450,500 people applying for visas would need to be asked the question, there are no estimates of how many would be denied entry because they lack the approved forms of insurance coverage.

17. I sought to examine these issues with currently available data, using a nationally representative survey called the Medical Expenditure Panel Survey (MEPS) conducted by the federal Agency for Healthcare Research and Quality.[7] I analyzed the most recent full-year MEPS data for 2017. To represent the types of people who might be affected, I examined the status and medical expenditures for recent immigrants (those born outside the U.S.), who entered the U.S. within five years of the date of the survey. This group of recent immigrants includes recently admitted legal immigrants aged 18 to 64, those targeted by the proclamation, but also naturalized citizens and undocumented immigrants; the survey does not have more detailed data about their precise immigration status. To assess the scope of the costs associated with uninsured recent immigrants, I compared them to "not recent immigrant" adults, which includes U.S.-born citizens and immigrants who have been in the U.S. for five years or more. I recognize that this is

[6] U.S. Department of State. Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage. Federal Register, 84(210): 58199-200, Oct. 30, 2019.

[7] Agency for Healthcare Research and Quality, HHS. Medical Expenditure Panel Survey. https://meps.ahrq.gov/mepsweb/index.jsp

not an ideal analysis, but it should provide a rough idea of the impacts. Table 1 below presents data about the percent of American adults and uninsured adults who are recent uninsured immigrants. Recent, uninsured immigrants are only 0.3 percent of American adults and only 2.9 percent of all uninsured adults.

Table 1. Distribution of Recent Immigrant and Insurance Status, Adults 18-64

Category	% Total Population	% Total Uninsured
Not Recent Immigrant & Insured	89.2%	
Not Recent Immigrant & Uninsured	9.5%	97.1%
Recent Immigrant & Insured	1.0%	
Recent Immigrant & Uninsured	0.3%	2.9%

Source: Analysis of 2017 Medical Expenditure Panel Survey

18. Next I considered the medical costs incurred in providing care for these adults. Table 2 presents the average medical expenditure per person in 2017. Table 3 combines information about the share of the population that each group represents and their average medical expenditures to show the overall fraction of national medical expenditures incurred in care for recent uninsured immigrants.

Table 2. Per Person Annual Medical Expenditures by Immigrant and Insurance Status

Category	Average Total Medical Expenditures	Average Ambulatory Medical Expenditures	Average Emergency Expenditures	Average Inpatient Expenditures
Not Recent Immigrant & Insured	$5,071	$1,345	$221	$1,087
Not Recent Immigrant & Uninsured	$1,369	$308	$144	$398
Recent Immigrant & Insured	$2,439	$1,039	$169	$449
Recent Immigrant & Uninsured	$933	$48	$61	$447

Source: Analysis of 2017 Medical Expenditure Panel Survey

Table 3. Distribution of Total U.S. Medical Expenditures by Immigrant and Insurance Status

Category	% of Total US Medical Expenditures	% of Total Ambulatory Medical Expenditures	% of Total Emergency Expenditures	% of Total Inpatient Expenditures
Not Recent Immigrant & Insured	96.65%	96.80%	92.70%	95.71%
Not Recent Immigrant & Uninsured	2.77%	2.35%	6.42%	3.72%
Recent Immigrant & Insured	0.52%	0.84%	0.80%	0.44%
Recent Immigrant & Uninsured	0.06%	0.01%	0.08%	0.13%

Source: Analysis of 2017 Medical Expenditure Panel Survey

As seen in Table 2, immigrants generally use much less medical care than those who are not recent immigrants, particularly when they are uninsured. Thus, the average annual medical expenditure per recent uninsured immigrant is $933, less than one-fifth the amount used by the largest group, insured adults who are not recent immigrants ($5,071). This pattern holds true for ambulatory care (care at doctors' offices), emergency care and inpatient hospital care; uninsured immigrants use very little care, compared with others. As seen in Table 3, when I factor in how many people are in each category, we can see that recent uninsured immigrants use less than one-tenth of one percent (0.06 percent) of total American medical resources and just 0.08 percent of emergency care expenditures. If I was able to further confine the analysis to recent legally admitted non-citizen immigrants, such as visa applicants hope to be, the share of medical costs for target population of the President's proclamation would be much smaller. Given how little medical care is used by uninsured recent immigrants, there is no reasonable basis to believe that immigrants are creating a massive fiscal burden for the nation, nor that care for uninsured recent immigrants is crowding out care for citizens or others.

19. There is no reasonable evidentiary basis for the President's claim that providing uncompensated care for uninsured recent immigrants hinders citizens or others from getting medical care. The Administration has failed to provide evidence that it adequately developed

analyses supporting its stated policy rationale. Indeed, if the President is concerned about reducing uncompensated care as expressed in the proclamation, then it would make more sense to reduce the share of citizens and immigrants who are uninsured by expanding Medicaid or other forms of health insurance, such as the health insurance marketplaces.

What Are the Potential Effects of the President's Policy?

20. Neither does the government provide any analysis of the potential effect of its policy. How many immigrant visa applicants might be denied entry because they lack the approved forms of insurance or because they lack adequate financial resources to pay for medical care? In addition, how would a consular official determine what the appropriate level of financial resources is? Neither the President nor the State Department addressed these issues.

21. Recent analyses by the Migration Policy Insitute, based on analyses of 2014-16 American Community Survey data, found that, among adult green-card holders who entered the U.S. in the past two years, 34 percent were uninsured and 31 percent were covered by Medicaid or subsidized insurance that would not count as approved insurance under the Prsidential proclamation.[8] The State Department estimated that 450,500 people per year would be subject to the proclamation and would be asked about their insurance coverage.[9] Unless these immigrants obtain another type of insurance coverage or have the undefined level of financial resources to cover their medical needs, these data suggest that roughly 293,000 visa applicants would be denied visas each year. In 2018, about 533,000 immigrant visas were issued by the State

[8] Gelatt J, Greenberg M. Health Insurance Test for Green Card Applicants Could Sharply Cut Future U.S. Legal Immigration. Migration Policy Institute. Oct. 2019. https://www.migrationpolicy.org/news/health-insurance-test-green-card-applicants-could-sharply-cut-future-us-legal-immigration

[9] U.S. Department of State. Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage. Federal Register, 84(210): 58199-200, Oct. 30, 2019.

Department.[10] That means this policy alone might reduce the number of legal immigrants to the United States by about 55 percent.

22. What are the implications of such a large and sudden reduction of legal immigration to the United States? A substantial body of evidence has demonstrated the importance of immigrants in meeting the nation's need for workers and in supporting the U.S. economy, including a landmark report by the National Academy of Sciences.[11] It is reasonable to worry that such a drastic reduction would have major repercussions for America's economy and the supply of labor to meet the needs of the nation's businesses. It would also extend a large social toll on large numbers Americans who find that they cannot be reunited with family members living abroad, who may have been waiting years for visas to enter the country. It could also have serious consequences for the demographic, social and racial/ethnic composition of the nation. There is no evidence that the Administration considered the potentially sweeping consequences of its policy.

23. Another problematic aspect of the Presidential proclamation is the types of insurance coverage that it includes and excludes. Although the proclamation describes the underlying problem as one of uncompensated care, it does not articulate why Medicaid or tax-subsidized health insurance marketplace coverage are not acceptable forms of insurance coverage. Evidence indicates the expansion of Medicaid under the Affordable Care Act reduced uncompensated care levels by over $6 billion.[12] If anything, this suggests that if the

[10] U.S. State Department. Report of the Visa Office 2018. https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/annual-reports/report-of-the-visa-office-2018.html

[11] National Academy of Sciences. The Economic and Fiscal Consequences of Immigration. Washington, DC: National Academy Press. 2017.

[12] Dravnove D, Garthwaite G, Ody C. The Impact of the Affordable Care Act's Medicaid Expansion on Uncompensated Care and the Potential Effects of Repeal. Commonwealth Fund. May 2017.

Administration is concerned about uncompensated care, it would be more effective to promote the expansion of Medicaid programs.

24. Instead, the proclamation encourages immigrants to purchase short-term insurance, temporary insurance policies meant to cover people for periods of a few weeks to several months. These policies are not subject to insurance regulations under the Affordable Care Act which guarantee certain levels of insurance protection. It is difficult to think of a less efficient or less useful health insurance mechanism. A recent analysis noted that short-term insurance plans "benefit insurance companies more than the patients who purchase them."[13] On average, less than 40 percent of the cost of the insurance premium for a short-term plan is actually spent on medical care, the majority is profit and administrative costs for the insurance companies. By comparison, regular health insurance plans spend about twice as much of the premiums on actual medical care. (In comparison, the administrative costs for Medicaid are even lower, about 7 percent, making it far more efficient than either.) Because short-term plans, which need not provide essential health benefits under the Affordable Care Act, often have high cost-sharing and large insurance exclusions, the short-term plans usually offer less effective coverage protection than most other insurance and might not effectively protect against uncompensated care costs. For example, a short-term plan might exclude maternity coverage or preexisting conditions, so would not protect a woman who delivers a baby or a person who has a history of diabetes or heart disease.

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https://www.commonwealthfund.org/publications/issue-briefs/2017/may/impact-acas-medicaid-expansion-hospitals-uncompensated-care

[13] Livingston S. Short-term health plans spend little on medical care. *Modern Healthcare.* Aug. 6, 2019. https://www.modernhealthcare.com/insurance/short-term-health-plans-spend-little-medical-care

Changing Goals of Immigration Policy

25. Much of President Trump's public statements about immigration policy focus on the desire to protect the American public from crime and terrorism. But the available evidence suggests that this does not correspond to actual changes in the reasons immigrants are legally admitted or denied entry. For example, using data from State Department statistics on visa denials, in 2016, the last year of the Obama Administration, 4,991 visa applications were denied due to reasons related to crime, drug abuse or terrorism; this level has remained flat under the Trump Administration, reaching 4,916 denials in 2018. In comparison, the number of visas denied due to public charge reasons was 1,076 in 2016 under the Obama Administration and soared to 13,450 in 2018, after the State Department implemented new public charge policies that were unrelated to crime or terrorism.[14] The analysis above suggests that the new Presidential proclamation could lead to as many as 293,000 additional visa denials because immigrants lack the approved types of health insurance, radically reducing the number of immigrants admitted and constituting a massive shift in American immigration policy. Under the Administration's new policies, the primary reason for denying immigrant visas would become because immigrant applicants are poor or lack the right type of insurance coverage, not to protect against crime or terrorism.

I hereby declare under penalty of perjury under the laws of Washington D.C. and the United States that the foregoing is true and correct.

[14] State Department. Reports of the Visa Office for 2016 and 2018. See Table XX in each report. https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html

DATE: November 8, 2019

Leighton Ku, Ph.D., MPH

EXHIBIT A

CURRICULUM VITAE

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Summary

Leighton Ku, PhD, MPH, is a professor of health policy and management at the George Washington University (GW). He is a nationally known health policy and health services scholar with more than 25 years of experience. He has examined topics such as national and state health reforms, access to care for low-income populations, Medicaid, preventive services, the health care safety net, cost and benefits of health services, and immigrant health. He has authored or co-authored more than 90 peer-reviewed articles and 200 policy briefs and other translational reports. He directs the Center for Health Policy Research, a multidisciplinary research center, which includes physicians, attorneys, economists, health management and policy experts and others, with more than 20 faculty and dozens of staff; it has a research portfolio in excess of $25 million. He has been principal investigator for a large number of studies with support from the National Institutes of Health, Centers for Disease Control and Prevention, Centers for Medicare and Medicaid Services, the Commonwealth Fund and Robert Wood Johnson Foundation, and other sources. In the course of his career at GW, the Center on Budget and Policy Priorities and the Urban Institute, he has worked with federal and state executive and legislative agencies, health care organizations, advocates and others in research, technical assistance, strategic advice and advocacy. As a faculty, he has taught research methods and policy analysis at the graduate level for more than 20 years and guided numerous students through dissertations and other research. As a member of his community, he helped establish and guide the District of Columbia's Health Benefits Exchange Authority as a founding member of its Executive Board.

Education

1990	Ph.D., Health Policy, Boston University (Pew Health Policy Fellow in a joint program of Boston University and Brandeis University)
1979	M.P.H., Public Health, University of California, Berkeley
1979	M.S., Nutritional Sciences, University of California, Berkeley
1975	A.B. (honors), Biochemistry, Harvard College

Professional Background

2015 – present	Co-Director, PhD Health Policy Program. First at GW Trachtenberg School of Public Policy and Administration, now at Milken Institute School of Public Health.
2012 - present	Executive Board, District of Columbia Health Benefit Exchange Authority (voluntary position).
2008 - present	Director, Center for Health Policy Research, The George Washington University

2008 - present	Professor of Health Policy and Management (with tenure), Department of Health Policy and Management, Milken Institute School of Public Health, The George Washington University.
2015- 2016	Interim Chair, Department of Health Policy and Management
2000 - 2008	Senior Fellow, Center on Budget and Policy Priorities, Washington, DC
1992 - present	Professor in Public Policy and Public Administration, Trachtenberg School of Public Policy and Administration, The George Washington University. Secondary appointment. Began as Associate Professorial Lecturer.
1990 - 2000	Principal Research Associate. The Urban Institute, Washington, DC. Began as Research Associate I.
1989 - 1990	Research Manager, SysteMetrics/McGraw-Hill, Cambridge, MA.
1987 - 1989	Pew Health Policy Fellow, Health Policy Institute, Boston University and the Heller School, Brandeis University
1980 - 1987	Program Analyst, Office of Analysis and Evaluation and Supplemental Food Programs Division, Food and Nutrition Service, U.S. Dept. of Agriculture, Alexandria, VA and Washington, DC.
1975 - 1976	Registered Emergency Medical Technician, Dept. of Health and Hospitals, Boston, MA

Publications Authored or Co-authored in Peer-Reviewed Journals

[Aggregate measures of scholarly productivity: H-index = 44, I10-index = 119 (according to Google Scholar as of June 26, 2019.]

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Ku L, Guyer J. Medicaid Spending: Rising Again But Not to Crisis Levels, Center on Budget and Policy Priorities, April 20, 2001.

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Holahan J, Ku L, Pohl M.. Is Immigration Responsible for the Growth in the Number of Uninsured People? Kaiser Commission on Medicaid and the Uninsured, March 2001.

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Ku L, Matani S. Immigrants' Access to Health Care and Insurance on the Cusp of Welfare Reform, Assessing the New Federalism Discussion Paper 00-03, Washington, DC: The Urban Institute, June 2000.

Ku L, Garrett B. How Welfare Reform and Economic Factors Affected Medicaid Participation: 1984-96, Assessing the New Federalism Discussion Paper 00-01, Washington, DC: The Urban Institute, February 2000.

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Coughlin T, Ku L, Kim, J., Reforming the Medicaid Disproportionate Share Program in the 1990s, Assessing the New Federalism, The Urban Institute, Discussion Paper 99-14, (joint release with Commonwealth Fund), 1999. [PR]

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Ku L, Ullman F, Almeida R, What Counts? Determining Medicaid and CHIP Eligibility for Children, Assessing the New Federalism Discussion Paper 99-05, Washington, DC: The Urban Institute, 1999.

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Ku L, Kessler B. The Number and Cost of Immigrants on Medicaid: National and State Estimates, Report to the Office of the Assistant Secretary for Planning and Evaluation from the Urban Institute, December 1997. [PR]

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Ku L, Publicly Supported Family Planning in the United States: Financing of Family Planning Services. Report to the Kaiser Family Foundation, The Urban Institute, June 1993.

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Sonenstein FL., Pleck JH, Ku L. Why Young Men Don't Use Condoms: Factors Related to Consistency of Utilization, Sexuality and American Policy Seminar Series, Kaiser Family Foundation and American Enterprise Institute for Public Policy Research, Washington, D.C., May 1995.

Ku L and the NSAM Study Team, Preliminary Results of the Pretest for the National Survey of Adolescent Males, Report to the Centers for Disease Control and Prevention and the National Institute for Child Health and Human Development, November 1994.

Ku L, Levine G, Sonenstein F, State STD Reporting Rules and Research Surveys, Report to the Centers for Disease Control and Prevention, September 1994.

Sonenstein F, Pleck J, Ku L, The Male Side of the Equation, TEC Networks, 33:3-4, June 1992.

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Food and Nutrition Policy

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Ku L, Cohen B, Pindus N. Full Funding for WIC: A Policy Review, Washington, DC: Urban Institute Press, 1994.

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Ku L, Institutional Participation in the National School Lunch and Breakfast Programs, Final Report to the Food and Nutrition Service, USDA from the Urban Institute, March 1993.

Ku L, Reported Meal Production Costs and Reimbursement Rates in the National School Lunch Program, Draft Report to the Food and Nutrition Service, USDA from the Urban Institute, April 1992.

Ku L, Brayfield A, and others, Evaluation of Low-Income Children's Nutritional Needs and Participation in USDA's Food Assistance Programs: Conceptual Assessment. Report to Food and Nutrition Service, USDA from the Urban Institute, February 1992.

Ku L, McKearn M. Effects of the Temporary Emergency Food Assistance Program (TEFAP) on Displacement of Commercial Sales, (with the Economic Research Service and Mathematica Policy Research), Report to Congress, U.S. Dept. of Agriculture, August 1987.* [PR]

Ku L, Dalrymple R., Differences Between SIPP and Food and Nutrition Service Program Data on Child Nutrition and WIC Program Participation, Survey of Income and Program Participation (SIPP) Working Papers, No. 8707, Bureau of the Census, May 1987.

Ku L, Nutritional Research Relating to Infant Feeding in the WIC Program, Report to the Assistant Secretary for Food and Consumer Services, June 1986.*

Richman L, Hidelbaugh T, McMahon-Cox N, Ku L, Dayton CM, Goodrich N. Study of WIC Participant and Program Characteristics, Report to Congress, Food and Nutrition Service, U.S. Dept. of Agriculture (with Ebon Research Systems and Abt Associates Inc.), April 1986. [PR]

Ku L, Abbot J, Forchheimer M. The Feasibility, Costs and Impacts of a Universal School Lunch Program, Draft Report to Congress, U.S. Dept. of Agriculture, June 1985.

Puma M, Ku L, Economic Analysis of the Temporary Emergency Food Assistance Program, Report to Congress, Food and Nutrition Service, U.S. Dept. of Agriculture, May 1985.* [PR]

Ku L, Nichols A. Report on the Food Bank Demonstration Project, Report to Congress, Food and Nutrition Service, U.S. Dept. of Agriculture, April 1984.* [PR]

* These reports were issued as official Agency or Department reports with no listed authors. In addition, Leighton Ku wrote numerous proposed and final regulations and legislative and budget reports while on the staff of the Food and Nutrition Service. In many cases, these were published in the Federal Register, Congressional Record and related Federal series.

Selected Presentations and Testimony

Ku, L. Testimony: Economic and Employment Benefits of Expanding Medicaid in North Carolina. Field Hearing, North Carolina Assembly. Winston-Salem, NC. Aug. 16, 2019. Similar presentation at Field Hearing, North Carolina Legislature, Raleigh, NC, Oct. 1, 2019.

Ku L. Current Threats to Medicaid. Dialogue on Diversity. UnidosUS. Washington, DC. June 26, 2019.

Ku, L, Rosenbaum S, Keith K, Blumberg L, Sidhu A. Health Policy Goes to Court: Collaborations of Law and Research. AcademyHealth Annual Research Conf. Washington, DC. June 2, 2019

Ku L, Brantley E, Pillai D. The Effects of SNAP Work Requirements in Reducing Participation and Benefits. AcademyHealth Annual Research Conf. Washington, DC. June 4, 2019

Brantley E, Pillai D, Ku L. Factors Affecting Enrollment in Public Programs. AcademyHealth Annual Research Conf. Washington, DC. June 2, 2019

Ku, L. Immigrants and American Health Policy. Boston College. Global Migration Conference: Inclusion and Exclusion. Boston MA April 12, 2019.

Ku, L. Medicaid Policy in the States. Scholars Strategy Network National Leadership Conference, Washington DC. Jan. 18, 2019.

Ku, L. Health Insurance Coverage for DC Latinos. DC Latino Health Leadership Symposium. Washington DC. Jan. 9, 2019.

Seiler N, Ku L. Medicaid's Role in Addressing the Opioid Crisis. GW seminar, Nov. 16, 2017.

Ku L. Medicaid: Addressing Tobacco & Opioid Addictions. Presentation at Addressing Addiction: Policy Prescriptions to Preventing Opiate Abuse and Tobacco Use. Health Policy Institute of Ohio, Columbus, OH, Sept. 26, 2017.

Ku L. Economic and Employment Effects of the Better Care Reconciliation Act. Testimony to the Maryland Legislative Health Insurance Coverage Protection Commission, Maryland House of Delegates, Annapolis, MD. Aug. 1, 2017. Similar presentation at REMI webinar, Aug. 2, 2017.

Ku L. Economic and Employment Effects of the American Health Care Act. Presentation at AcademyHealth Annual Research Conference, New Orleans, June 25, 2017. Similar presentations at Policy in the Trump Era: National, State, and Regional Economic Impacts Conference, Hall of States, Washington, D.C. June 19, 2017 and at Medicaid Policy Conference, Council of State Governments, Washington, DC, June 29, 2017.

Ku L. Repealing Obamacare: Effects on the Health Workforce. Presentation at AcademyHealth Annual Research Conference, New Orleans, June 26, 2017.

Brantley E, Ku L. Promoting Tobacco Cessation: The Role of Medicaid and Other Policies. Poster at AcademyHealth Annual Research Conference, New Orleans, June 26, 2017.

Ku L. The Future of Medicaid. Conference on Obamacare After Obama. Southern Illinois Healthcare/Southern Illinois University School of Law. Springfield, IL, May 19, 2017.

Brantley E, Ku L. Linking Data to Uncover Medicaid's Role in Cessation. National Conference on Tobacco or Health, Austin TX, March 23, 2107.

Ku L. The Future of Medicaid and the Safety Net. Health Policy Expert Series. Milken Insitute School of Public Health. March 21, 2017.

Ku L. Financial Consequences of ACA Repeal. Podcast, Feb. 15, 2017 http://www.commonwealthfund.org/interactives-and-data/multimedia/podcasts/new-directions-in-health-care/the-impact-of-aca-repeal

Ku L. Repealing Health Reform: Economic and Employment Consequences for States. REMI Seminar, Washington, DC. Jan. 27, 2016. Similar national webinar Feb. 1, 2017.

Ku L. Pay for Success Demonstrations of Supportive Housing for Chronically Homeless Individuals: The Role of Medicaid. Association for Public Policy and Management Research Conference, Washington, DC. Nov. 4, 2016.

Ku L. Immigrants and Community Health Centers. Pennsylvania Association of Community Health Centers, Lancaster PA. Oct. 12, 2016.

Ku L. Moving Medicaid Data Forward (discussant). Mathematica Policy Research, Washington, DC Oct. 11, 2016.

Ku L. Medicaid Can Do More to Help Smokers Quit, Michael Davis Lecture, University of Chicago, Oct. 4, 2016. Similar seminar at Univ. of Maryland, Sept. 15, 2016.

Ku L, Borkowski L. Publish or Perish: Advice for Publishing for Peer-Reviewed Journals in Health Policy. GW Department of Health Policy & Management seminar, Sept. 20, 2016.

Ku L . Family Planning, Health Reform and Potential Restrictions on Coverage or Access, presented at Contraception Challenged: Putting *Zubik v. Burwell* in Context, sponsored by National Family Planning and Reproductive Health Association meeting at Capitol Visitors Center, Washington, DC, June 7, 2016.

Ku L Russell T. et al. Debate on the Role of Public Programs in Care for the Poor. Benjamin Rush Institute, Washington, DC, April 1, 2016.

Brantley E, Ku L. Improved Access and Coverage Under The ACA: Are Immigrants at the Table?, presented at GW Research Day, March 30, 2016. (Won prize for best policy and practice research.)

Ku L. The Role of the Health Care Safety Net, Virginia Commonwealth University, Richmond, March 17, 2016.

Ku L, Steinmetz E, Bysshe T. Medicaid Continuity of Coverage in an Era of Transition. Webinar for Association of Community-Affiliated Plans, Nov. 2, 2015.

Ku L Bruen B, Steinmetz E, Bysshe T. Trends in Tobacco Cessation Among Medicaid Enrollees, presented at AcademyHealth Annual Research Meeting, Minneapolis, June 15, 2015.

Ku L. Using Economic Impact Analysis in Medicaid Advocacy, presented at AcademyHealth Annual Research Meeting, Minneapolis, June 13, 2015.

Ku L. The Translation of Health Services Research into Policy Related to the Affordable Care Act, Presented at American Association of Medical Colleges, March 20, 2015.

Ku L. Policy and Market Pressures on Safety Net Providers, National Health Policy Conference, Feb. 10, 2015.

Ku L. 'Economic and Employment Costs of Not Expanding Medicaid in North Carolina, Cone Health Foundation, Greensboro, NC, Jan. 9, 2015.

Ku L . Health Reform: How Did We Get Here, What the Heck Is Going On and What Next? Keynote Address: Medical Librarians Association, Alexandria VA, Oct. 20, 2014.

Ku L. Health Reform and the Safety Net. Testimony before Maryland Community Health Resources Commission. Annapolis, MD, Oct. 2, 2014.

Ku L. Some Key Issues in Health Reform. Presented at American Association for the Advancment of Science Health Policy Affinity Group Meeting, Washington, DC July 24, 2014.

Ku L, Curtis D. Barlow P. District of Columbia's Health Benefits Exchange at the Launch of a State-Based Exchange: Challenges and Lessons Learned Georgetown Law School Summer Session on Health Reform, July 23, 2014.

Ku L. The Big Picture on Medicaid for State Legislators Presented at Council of State Governments. Medicaid Workshop for Health Leaders, Washington, DC June 20, 2014.

Ku L, Frogner B, Steinmetz E, Pittman P. Many Paths to Primary Care: Flexible Staffing and Productivity in Community Health Centers, Presented at Annual Research Conference AcademyHealth, San Diego, CA, June 10, 2014.

Ku L, Zur J., Jones E, Shin, P, Rosenbaum S. How Medicaid Expansions and Post-ACA Funding Will

Affect Community Health Centers' Capacity. Presented at Annual Research Conference AcademyHealth, San Diego, CA, June 9, 2014.

Ku L. Critical Issues for Community Health Centers, Alliance for Health Reform briefing, Commonwealth Fund, Washington, DC. May 16, 2014.

Ku L. Immigrants' Health Access: At the Nexus of Welfare, Health and Immigration Reform, Keynote talk at Leadership Conference on Health Disparities, Harvard Medical School, Boston, MA May 6, 2014.

Ku L. Wellness and the District of Columbia. District of Columbia Chamber of Commerce forum, Washington, DC, March 11, 2014.

Ku L. Health Care for Immigrant Families: A National Overview. Congressional Health Justice Summit, Univ. of New Mexico - Robert Wood Johnson Center for Health Policy, Albuquerque, NM, Sept. 7, 2013.

Ku L. Health Reform: Promoting Cancer Prevention and Care. Talk to DC Citywide Navigators Network, Washington, DC, July 15, 2013.

Ku L. Analyzing Policies to Promote Prevention and Health Reform. Seminar at the Centers for Disease Prevention and Promotion, Atlanta, GA. July 10, 2013.

Ku L. Medicaid: Key Issues for State Legislators. Council on State Governments, Medicaid Workshop for Health Leaders, Washington, DC, June 22, 2013.

Ku. L.Steinmetz E. Improving Medicaid's Continuity of Care: An Update. Association of Community Plans Congressional Briefing, May 10, 2013.

Ku L (with Brown C, Motamedi R, Stottlemeyer C, Bruen B) Economic and Employment Impacts of Medicaid Expansions. REMI Monthly Policy Seminar, Washington, DC, April 24, 2013.

Ku L. Building Texas' Primary Care Workforce, Legislative Briefing: Health Care Coverage Expansion & Primary Care Access in Texas, Center on Public Priorties and Methodist Healthcare Ministries, Texas Capitol, Austin, TX, Mar. 8, 2013

Ku L, Jewers M. Health Care for Immigrants: Policies and Issues in a New Year. Presentation to Conference on After the Election: Policies Affecting Young Children of Immigrants, Migration Policy Institute, Washington, DC, Jan. 17, 2013.

Ku L. Health Reform and the New Health Insurance Exchanges: Issues for Indiana Families, Indiana Family Impact Seminar at Indiana State Legislature, Nov. 19, 2012.

Ku L. Pediatric Preventive Medical and Dental Care: The Role of Insurance and Poverty, AcademyHealth Annual Research Meeting, Orlando, FL, June 24, 2012.

Ku L. A Medicaid Tobacco Cessation Benefit: Return on Investment, Webinar for Partnership for Prevention and Action to Quit, Feb. 8, 2012.

Ku L. Safety Net Financing Issues, Webinar for National Workgroup on Integrating a Safety Net, National Academy for State Health Policy, Feb. 6, 2012

Ku L. How Medicaid Helps Children: An Introduction. Briefing to Congressional Children's Health

Caucus, Jan. 25, 2012

Ku L. Market Access Webinar: Provider Access: Coordinating Medicaid & Exchanges: Continuity of Services & the Role of Safety Net Providers, Webinar for Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services, Dec. 15, 2011.

Ku L. The Safety Net: An Evolving Landscape, Presented to Grantmakers in Health, Washington, DC. Nov. 3, 2011. [Similar talks in Orlando, FL to Blue Cross Blue Shield of Florida Foundation, Feb. 17, 2012 and in Williamsburg, VA to Williamsburg Community Health Foundation Apr. 3, 2012 and to Virginia Health Foundation, Nov. 13, 2012]

Ku L. Open Access Publishing. Presented at forum for GW Medical Center faculty and staff, Oct. 24, 2011.

Ku L, Levy A. Implications of Health Reform for CDC's Cancer Screening Programs: Preliminary Results, Presentation to National Breast and Cervical Cancer Early Detection Program and Colorectal Cancer Control Program Directors Meeting, Atlanta, GA, Oct. 21, 2011.

Ku L. Coordinating Medicaid & Exchanges: Continuity of Services & the Role of Safety Net Providers, Presented to America's Health Insurance Plans, Washington, DC. Sept. 16, 2011.

Ku L. The Potential Impact of Health Reform on CDC's Cancer Screening Programs: Preliminary Results, Presented to NBCCEDP Federal Advisory Committee Meeting, Atlanta, GA, Jun. 17, 2011. (Similar presentations to the American Cancer Society, Sept. 2011.)

Ku L. Crystal Balls and Safety Nets: What Happens After Health Reform? Presented at AcademyHealth, Seattle, WA, June 2011.

Ku L. Strengthening Primary Care to Bend the Cost Curve: Using Research to Inform U.S. Policy, International Community Health Center Conference, Toronto, Canada, June 2011

Ku L. Integrating/Coordinating Care for Safety Net Providers: Issues and Local Examples, International Community Health Center Conference, Toronto, Canada, June 2011.

Ku L. Health Reform: Federal Implementation and More Unanswered Questions Presented at American Society of Public Administration, Baltimore, MD, Mar. 14, 2011.

Ku L. Key Issues in the Confusing World of Health Reform, Presented to Industrial College of the Armed Forces, National Defense University, Washington, DC, Feb. 25, 2011.

Ku L. Reducing Disparities and Public Policy Conflicts, Institute of Medicine Workshop on Reducing Disparities in Life Expectancy, Washington, DC, Feb. 24, 2011.

Ku L. Primary Care, Hospitalizations and Health Reform, American Enterprise Institute Workshop, Washington, DC, Feb. 17, 2011.

Ku L. The Promise and Perils of Health Policy for Asians in the United States, Invited keynote talk at 4th International Asian Health and Wellbeing Conference, Univ. of Auckland, New Zealand, NZ, July 6, 2010. Similar talk at symposium sponsored by the New Zealand Office of Ethnic Affairs, Wellington, NZ, July 8, 2010.

Ku L, Strengthening Primary Care to Bend the Cost Curve: The Expansion of Community Health Centers Through Health Reform, Briefing for Senate and House staff and media, convened by Sen. Bernie Sanders (VT), Russell Senate Office Building, June 30, 2010.

Ku L. Ready, Set, Plan, Implement. Executing Medicaid's Expansion, *Health Affairs* Conference on Health Reform, Washington, DC, June 8, 2010.

Ku L. Coordinating Care Among Safety Net Providers, Primary Care Forum, National Academy of State Health Policy, Alexandria, VA, June 2, 2010.

Ku L.Title VI: The Role of Culturally Competent Communication in Reducing Ethnic and Racial Health Care Disparities, National Minority AIDS Education and Training Center Spring Symposium, Howard Univ. May 29, 2010.

Ku L. American Health Reform as Massive Incrementalism, American Association for Budget and Program Analysis, Nov. 24, 2009.

Ku L. The Health Care Safety Net and Health Reform, National Academy of Public Administration, Conference on Health Care for the Future, Nov. 22, 2009.

Ku L. The Health of Latino Children, National Council of La Raza Symposium on Latino Children and Youth, Oct. 22, 2009.

Ku L. What the Obama Administration Will Mean for Child Health, AcademyHealth preconference session on Child Health, Chicago, IL June 2009.

Ku L. Immigrants and health reform, 6th Annual Immigration and Law Conference, Georgetown Univ. Law School, Migration Policy Institute and Catholic Legal Immigration Network, Washington, DC, June 24, 2009.

Ku L. From the Politics of No! to the Potential for Progress, invited keynote talk about immigrant policy and research to Society for Research in Child Development, Denver, CO, April 1, 2009.

Ku L. Strengthening the Primary Care Safety Net, National Association of Community Health Centers, Policy and Issues Conference, March 26, 2009.

Ku L. The Dial and the Dashboard: Assessing the Child Well-Being Index, Presentation to the Board of the Foundation for Child Development, March 3, 2009.

Ku L. Key Data Concerning Health Coverage for Legal Immigrant Children and Pregnant Women, invited presentation to Senate staff, Jan. 13, 2009.

Ku L. Comparing the Obama and McCain Health Plans, George Washington Univ. Medical School Alumni Conference, Sept. 27, 2008.

Ku L. The Future of Medicaid, Medicaid Congress, sponsored by Avalere Health and Health Affairs, Washington, DC, June 5, 2008.

Ku L. A Brief Appreciation of Health Advocates: Progress Made, Some Setbacks, Challenges Ahead, Public Interest Law Center of Philadelphia Conference, Philadelphia, PA, May 14, 2008.

Ku L. Financing Health Care Reform in New Jersey: Making Down Payments on Reform, Rutgers-AARP Conference, New Brunswick, NJ. Mar. 18, 2008

Ku L, Perez T, Lillie-Blanton M. Immigration and Health Care-What Are the Issues, Kaiser Family Foundation HealthCast, webcast interview March 12, 2008.

Ku L. How Research Might Affect SCHIP Reauthorization, Child Health Services Research Meeting at AcademyHealth, Orlando, FL, June 2, 2007.

Ku L. Immigrant Children and SCHIP Reauthorization, Capital Hill Briefing conducted by the Population Resource Center, April 20, 2007.

Ku L. Health Policy and Think Tanks, Robert Wood Johnson Health Policy Fellows, Institute of Medicine, June 2006. Similar talk in other years.

Ku L. Medicaid Reform and Mental Health, National Alliance for the Mentally Ill, Annual Conference, Austin, TX, June 20, 2005.

Ku L. Cost-sharing in Medicaid and SCHIP: Research and Issues, National Association of State Medicaid Directors, Washington, DC, Nov. 18, 2004. Similar talk given to National Academy of State Health Policy, St. Louis, MO, Aug. 2, 2004.

Ku L. Coverage of Poverty-Level Aged and Disabled in Mississippi's Medicaid Program, Testimony to Mississippi Senate Public Health and Welfare Committee, Aug. 24, 2004

Ku L. Medicaid Managed Care Issues, Testimony to Georgia House of Representatives Appropriations Committee, March 2, 2004.

Ku L. Medi-Cal Budget Issues, Testimony to Joint Hearing of California Senate Budget and Health and Human Services Committees, Feb. 26, 2003.

Ku L .New Opportunities to Improve Health Care Access and Coverage, American College of Emergency Physicians, May 1, 2001.

Ku L,. Medicaid DSH and UPL: Perplexing Issues, National Association of Public Hospitals Health Policy Fellows Conference, Washington, DC, Mar. 20, 2001.

Ku L, Insurance Coverage and Health Care Access for Immigrant Families, Testimony Before the U.S. Senate Finance Committee, Washington, DC, March 13, 2001.

Ku L. Increasing Health Insurance Coverage for Low-Income Families and Children, Insuring the Uninsured Project Conference, Sacramento, CA, Feb. 13, 2001.

Ku L, Concerning the Healthy Families Program Parent Expansion Proposal, Testimony Before a Joint Hearing of the California Senate Health and Human Services and Insurance Committees and Budget and Fiscal Review Subcommittee # 3, Sacramento, CA, January 30, 2001.

Ku L, Insurance Trends and Strategies for Covering the Uninsured, National Health Law Program Conference, Washington, DC, Dec. 3, 2000.

Ku L, Improving Health Care Access and Coverage: New Opportunities for States in 2001, Midwest Leadership Conference, Council of State Governments, Minneapolis, MN, August 6, 2000.

Ku L, Health Care for Immigrants: Recent Trends and Policy Issues, Alliance for Health Reform, Washington, DC, August 2, 2000. Similar talks in Miami at Florida Governor's Health Care Summit and in San Diego at California Program on Access to Care conference.

Ku L, Matani S, Immigrants' Access to Health Care and Insurance on the Cusp of Welfare Reform, presented at Association for Health Services Research Conference, Los Angeles, CA, June 25, 2000.

Ku L, Matani S. Immigrants and Health Care: Recent Trends and Issues, presented to the Association of Maternal and Child Health Programs meeting, Washington, DC, March 7, 2000.

Ku L, Ellwood MR., Hoag S, Ormond B, Wooldridge J. Building a Newer Mousetrap: the Evolution of Medicaid Managed Care Systems and Eligibility Expansions in Section 1115 Projects, presented at American Public Health Association meeting, Chicago, IL, Nov. 10, 1999.

Ku L. Young Men's Reproductive Health: Risk Behaviors and Medical Care@, presented at D.C. Campaign to Prevent Teen Pregnancy Meeting, Washington, DC, Oct. 19, 1999.

Ku L, Medicaid and Welfare Reform: Recent Data, presented at Getting Kids Covered Conference, sponsored by National Institute for Health Care Management and Health Resources and Services Administration, Washington, DC, Oct. 6, 1999.

Ku L, Garrett B. How Welfare Reform and Economic Factors Affected Medicaid Participation, presented at Association for Health Services Research meeting, Chicago, IL, June 29, 1999.

Ku L. Recent Factors Affecting Young Men's Condom Use, presented to conference sponsored by National Campaign to Prevent Teen Pregnancy and Advocates for Youth, Washington, DC, February 1999.

Medicaid, Welfare Reform and CHIP: The Growing Gulf of Eligibility Between Children and Adults, presented to National Association of Public Hospitals and Health Systems, Washington, DC, and to Generations United, Washington, DC, September 1998.

Ku L. Sliding Scale Premiums and Cost-Sharing: What the Research Shows presented at workshop on CHIP: Implementing Effective Programs and Understanding Their Impacts, Agency for Health Care Policy and Research User Liaison Program, Sanibel Island, FL, June 30, 1998.

Ku L, Sonenstein F, Boggess S, Pleck J. Understanding Changes in Teenage Men's Sexual Activity: 1979 to 1995, presented at 1998 Population Association of America Meetings, Chicago, IL, April 4, 1998.

Ku L. Welfare Reform, Immigrants and Medicaid presented at Annual Meeting of the Association of Maternal and Child Health Programs, Washington, DC, March 9, 1998. Similar talk presented at Association for Health Services Research Meeting, Washington, DC, June 23, 1998.

Ku L. Medicaid Policy and Data Issues: An Overview presented to National Committee on Vital and Health Statistics, DHHS, September 29, 1997.

Ku L. How Welfare Reform Will Affect Medicaid Coverage presented to National Ryan White Title IV Program Conference, Washington, DC, November 8, 1996.

Ku L, Rajan S, Wooldridge J, Ellwood MR, Coughlin T, Dubay L. Using Section 1115 Demonstration Projects to Expand Medicaid Managed Care in Tennessee, Hawaii and Rhode Island, presented at Association of Public Policy and Management, Pittsburgh, Nov. 1, 1996.

Ku L. The Federal-State Partnership in Medicaid: Is Divorce Inevitable or Would Therapy Be Enough? presented to Council of State Governments Conference on Managing the New Fiscal Federalism, Lexington, KY, May 10, 1996.

Ku L. The Male Role in the Prevention of Teen Pregnancy, presented to the Human Services Committee, National Council of State Legislatures, Washington, DC, May 9, 1996

Ku L. Implications of Converting Medicaid to a Block Grant with Budget Caps, presented to American Medical Association State Legislation Meeting, Aventura, FL, Jan. 1996 and to the American Psychiatric Association Public Policy Institute, Ft. Lauderdale, FL, March 1996.

Ku L. Medicaid: Program Under Reconstruction, presented at Speaker's Forum at New York City Council, September 12, 1995.

Ku L. State Health Reform Through Medicaid Section 1115 Waivers, presented at Pew Health Policy Conference, Chicago, IL, June 3, 1995.

Ku L. Setting Premiums for Participants in Subsidized Insurance Programs, presented at Conference on the Federal-State Partnership for State Health Reform, sponsored by HCFA, the National Academy of State Health Policy and RTI, March 15, 1995.

Ku L. Medicaid Disproportionate Share and Related Programs: A Fiscal Dilemma for the Federal Government and the States, with Teresa Coughlin, presented to the Kaiser Commission on the Future of Medicaid, November 13, 1994.

Ku L. Full Funding for WIC: A Policy Review, with Barbara Cohen and Nancy Pindus, presented at Dirksen Senate Office Building, Washington, DC, in a panel hosted by the Center on Budget and Policy Priorities, Bread for the World, the Food Research and Action Center and the National Association of WIC Directors, May 5, 1994.

Ku L. The Financing of Family Planning Services in the U.S., presented at the Institute of Medicine, National Academy of Sciences on February 15, 1994 and at the American Public Health Association meeting, San Francisco, CA, October 25, 1993.

Ku L. Using SUDAAN to Adjust for Complex Survey Design in the National Survey of Adolescent Males, with John Marcotte and Karol Krotki, briefing at National Institute of Child Health and Human Development, Rockville, MD, April 2, 1992.

Ku L. The Association of HIV/AIDS Education with Sexual Behavior and Condom Use Among Teenage Men in the United States with Freya Sonenstein and Joseph Pleck, presented at the Seventh International Conference on AIDS, Florence, Italy, June 1991.

Ku L. Patterns of HIV-Related Risk and Preventive Behaviors Among Teenage Men in the United States, with Freya Sonenstein and Joseph Pleck, paper presented at the Sixth International Conference on AIDS, San Francisco, CA, June 23, 1990.

Ku L. Trends in Teenage Childbearing, Pregnancy and Sexual Behavior, paper presented at the American Sociological Association Meeting, Washington, D.C., August 15, 1990.

Ku L. Research Designs to Assess the Effect of WIC Participation by Pregnant Women on Reducing Neonatal Medicaid Costs, briefing to Congressional staff, February 1987.

Ku L. Testimony about the Special Supplemental Food Program for Women, Infants and Children (WIC), with Frank Sasinowski, presented to House Education and Labor Committee on behalf of the American Public Health Association, March 1983.

Media

Leighton Ku has extensive experience with electronic and print media. He has been interviewed by ABC, NBC, CBS, Fox, PBS, National Public Radio, CNN, Bloomberg TV, BBC and other television or radio news broadcasts and webcasts. He has been quoted or his research has been cited in the *New York Times, Los Angeles Times, Washington Post, Wall Street Journal, USA Today, Christian Science Monitor, Huffington Post, Forbes, Fortune, US News and World Report, Politico, The Hill, Buzzfeed,* and trade publications, such as *Modern Health Care, Nation's Health* or *CQ HealthBeat, Kaiser Health News*, etc. He has been an online contributor to the *Washington Post.* He was a regular panelist on a radio talk show about health policy, broadcast on WMAL in the Washington DC region. He has been cited as an expert by *PolitiFact* and related fact-checking sources.

Service and Honors

Member, Executive Board, District of Columbia Health Benefits Exchange Authority (2012-now) (The board governs the new health insurance exchange for the District of Columbia, based on the Patient Protection and Affordable Care Act. This is a voluntary, unpaid position, appointed by the Mayor and approved by the City Council. I was reappointed in 2018.) Chair of the Research Committee and Information Technology Committee. Led working groups that developed the financial sustainability plan for the Exchange, dental plans, standardized benefit plans and changes required in light of threats to the Affordable Care Act.

Social Science Research Network, one of five most downloaded papers in field, Oct-Dec. 2018.

Commonwealth Fund, two of the top ten most frequently downloaded reports (2017).

Commonwealth Fund, one of top ten most frequently downloaded reports (2006).

Award for promoting racial and economic justice, Mississippi Center for Justice, 2005

Service award from the National WIC Directors Association (2002).

Choice (the magazine of the American Library Association for academic publications), top ten academic books of the year (1994)

Pew Health Policy Fellow, Boston University and Brandeis University, 1987-1990.

Other Service

Submitted expert witness declaration in federal lawsuits on public charge regulations and health, including *La Clinica de la Raza, et al. v. Donald Trump, et al.* United States District Court, Northern District of California, September 1, 2019. *Make the Road New York, et al v Ken Cucinelli, et al.* United States District Court, Southern District of New York, Sept. 9, 2019. *State of New York, et al. v. U.S.*

Department of Homeland Security, et al. United States District Court, Southern District of New York, Sept. 9, 2019.

Helped develop and cosigned *amicus* briefs on behalf of public health scholars in key federal lawsuits, including *King v Burwell* (health insurance exchanges), *Stewart v Azar* (approval of Kentucky work requirement waiver, versions 1 and 2), *Gresham v Azar* (approval of Arkansas work requirements). *Texas v Azar* (constitutionality of ACA), *Philbrick v Azar* (approval of New Hampshire work requirement) and *Massachusetts v. US Dept of Health and Human Service* (contraceptive mandate).

Parliamentarian, Milken Institute School of Public Health, 2019

Member, Technical Expert Panel, AHRQ Panel on Future of Health Services Research, RAND, 2019.

Served as expert witness in federal lawsuits on immigration and health, including *State of Texas v United States and Perez* and *State of New York v Trump* (Deferred Action for Childhood Arrivals). 2018.

Co-Director, PhD Health Policy Program. First at GW Trachtenberg School of Public Policy and Administration, now at Milken Institute School of Public Health, 2015-now

Served as search committee member, chair, Department of Health Policy and Management, 2019 and faculty, Dept. of Exercise and Nutrition Sciences, 2019.

Search committee, Associate Provost for Graduate Studies, George Washington Univ, 2019

Member, AcademyHealth/NCHS Health Policy Fellowship Program board. 2016-17.

Affiliated faculty, Jacobs Institute of Women's Health, 2015-now.

Advisory Board, Remaining Uninsured Access to Community Health Centers (REACH) Project, Univ. of California Los Angeles, 2015-17.

Member, DC Metro Tobacco Research and Instruction Consortium (MeTRIC). 2014- present

Member, Health Workforce Research Institute, GW, 2013-present.

Member, National Advisory Board, Public Policy Center of University of Iowa, 2014-18.

Chair/Vice Chair, Advocacy Interest Group, AcademyHealth, 2014-17.

Member, Advisory Committee on Non-Health Effects of the Affordable Care Act, Russell Sage Foundation, Dec. 2013.

Member, Technical Expert Group on the Affordable Care Act and the National Survey of Family Growth, National Center for Health Statistics, Centers for Disease Control and Prevention, Nov. 2013

Member, Steering Committee, GW Institute of Public Policy, 2013-now

Member, External Review Committee for Department of Family Science for the University of Maryland School of Public Health, 2012.

GW Faculty Senator, representing School of Public Health and Health Services, 2010-12.

Member of numerous University, School and Departmental committees. 2008-present.

Member or chair, numerous faculty and dean search committees, Milken Institute School of Public Health and School of Nursing, George Washington University. 2008-present.

National Institutes of Health, member of various grant review study sections (1996-now).

Invited reviewer. Committee on National Statistics. National Academy of Sciences. Databases for Estimating Health Insurance Coverage for Children. 2010-11.

Grant reviewer. Robert Wood Johnson Public Health and Law program. 2010.

Invited reviewer, Institute of Medicine report on family planning services in the U.S., 2009.

External reviewer for faculty promotion and tenure for Harvard School of Public Health, Harvard Medical School, Univ. of California at Los Angeles and at San Diego, Boston University, Baruch College, George Mason University, University of Maryland, University of Iowa, Kansas University, Portland State University, etc., 2008-present.

Submitted expert witness affidavits/declarations in federal, state and local lawsuits including: *Texas v United States* and *New York, et al. v. Trump* (Deferred Action for Childhood Arrivals), *Wood, et al. v. Betlach,* (Medicaid cost sharing), *Lozano v. City of Hazleton* (immigrant rights), *Spry, et al., v. Thompson* (Medicaid cost-sharing), *Dahl v. Goodno* (Medicaid cost-sharing), *Newton-Nations, et al., v. Rogers* (Medicaid cost-sharing) and *Alford v. County of San Diego* (cost-sharing for a local health program).

Board Member and Treasurer, Alliance for Fairness in Reforms to Medicaid (2002-2008)

Urban Institute, founding member, Institutional Review Board (1997-2000)

National Health Research Institute (Taiwan's NIH) grant reviewer (1999).

Urban Institute, member, Diversity Task Force (1995)

Pew Health Policy Fellow, Boston University and Brandeis University, 1987-1990.

Consultant Services

Consortium of law practices, including Paul Weiss, National Health Law Program and New York State Attorney General, 2019
Mexican American Legal Defense and Educational Fund, 2018
New Jersey State Attorney General, 2018
New York State Attorney General, 2017
First Hospital Foundation, Philadelphia PA, 2017
Wilmer Hale/Planned Parenthood Federation, 2017
Centers for Disease Control and Prevention, 2016

Professional Society Memberships and Service

AcademyHealth (formerly Association for Health Services Research), Program Selection Committees (multiple years), chair Advocacy Interest Group (2014-16).
American Public Health Association
Association of Public Policy and Management, Program Selection Committees (many years)

Editorial Peer Review Service

Associate editor, *BMC Health Services Research,* 2009 – 2013.

Reviewer for numerous journals, including *Health Affairs, New England Journal of Medicine, Journal of the American Medical Association, Pediatrics, American Journal of Public Health, Inquiry, Medical Care, HSR, Medicare and Medicaid Research Review, American Journal of Preventive Medicine, Family Planning Perspectives, Journal of Association of Public Policy and Management, Nicotine and Tobacco Research, Maternal and Child Health, Journal of Health Care for the Poor and Underserved, JAMA-Internal Medicine*, *Public Administration Review* (1990 to now). In 2017, I reviewed 16 manuscripts for journals. External reviewer for RAND Corporation, National Academy of Science, Oxford Univ. Press, etc.

Public Health Practice Portfolio

Member, Executive Board, District of Columbia Health Benefits Exchange Authority (2012-now). The board governs the new health insurance exchange for the District. (Nominated by the Mayor and appointed by the City Council; reappointed in 2017). Chair of the IT and Eligibility Committee, Research Committee and various working groups.

Member, Technical Expert Group, the Future of Health Services Research, for Agency for Healthcare Research and Quality, conducted by RAND. Jan. 2019.

Expert Advisor, Russell Sage Foundation. Non-health effects of the Affordable Care Act. (2013).

Expert Advisor, Revisions to the National Survey of Family Growth, National Center for Health Statistics, CDC (2013)

Member, Technical Advisory Committee for Monitoring the Impact of the Market Reform and Coverage Expansions of the Affordable Care Act, sponsored by ASPE. (2013)

Member, Technical Advisory Group for the Design of the Evaluation of the Medicaid Expansion Under the ACA, sponsored by ASPE (2012)

Member, National Workgroup on Integrating the Safety Net, National Academy of State Health Policy, July 2011 – 2013.

Member, National Advisory group for Iowa Safety Net Integration project, 2011-2013.

Foundation for Child Development, Selection Committee, Young Scholars Program, 2008-2015.

Foundation for Child Development, Advisory Committee, Child Well-Being Index, 2008-present

Member, National Advisory Board, Center on Social Disparities on Health, University of California at San Francisco, 2005-2008.

National Campaign to Prevent Teen Pregnancy, Member, Effective Programs and Research Task Force (2000)

Doctoral Students Mentored/Advised

Dissertations Completed
Prof. Peter Shin (chair)
Prof. Megan McHugh
Dr. Sarah Benatar
Dr. Emily Jones (chair)
Dr. Saqi Cho (chair)
Dr. DaShawn Groves (chair)
Dr. Heitor Werneck
Dr. Brad Finnegan (chair)
Dr. Maliha Ali
Dr. Christal Ramos
Dr. Qian (Eric) Luo
Dr. Bill Freeman
Dr. Serena Phillips
Dr. Julia Strasser
Dr. Kristal Vardaman (chair)
Dr. Brian Bruen
Dr. Xinxin Han (chair)

In Progress
Evelyn Lucas-Perry (chair)
Nina Brown
Kyle Peplinski (chair)
Shin Nozaki
Jessica Sharac (chair)
Mariellen Jewers (chair)
Erin Brantley
Leo Quigley (chair)
Brent Sandmeyer (chair)

Other Student Advising

Co-Director, Health Policy PhD Program.
Faculty advisor, MPH, health policy. Provide guidance to about a dozen MPH students per cohort.
Faculty Advisor, GW Health Policy Student Association, 2016-now

EXHIBIT 13

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF CHARLES H. KUCK IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

John Doe, et. al., *Plaintiffs,* v. Donald Trump, *et al.*, *Defendants.*	Case No.: 3:19-cv-01743-SB **Declaration of Charles H. Kuck**

DECLARATION OF CHARLES H. KUCK

I, Charles H. Kuck, being an adult of sound mind and body, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. My name is Charles H. Kuck. I am an attorney licensed in the State of Georgia. I have been practicing immigration law for more than 30 years. I am the Managing Partner of Kuck Immigration Partners. I am a former national president of the American Immigration Lawyers Association (AILA), and the past president of the Alliance of Business Immigration Lawyers (ABIL). I have extensive experience in meetings, both public and private with the Department of

State's Consular Process. I am personally familiar with, and knowledgeable of, the method by which the Department of State treats visa applicants, analyzed immigrant visa eligibility and determines inadmissibility.

2. I have represented a number of applicants who, in the course of the last two years have been denied an immigrant visa at a consulate for reasons related to prior alien smuggling, public charge, and prior immigration misrepresentations. In each of these situations, prior to leaving the United States, the applicant had obtained approval an of a Form I-601A, wavier of inadmissibility for unlawful presence.

3. In each of these cases, when the consular official denied the immigrant visa for other reasons, the previously approved waiver of inadmissibility was cancelled, and the client had to reapply for that waiver, and apply for a waiver of the additional ground of inadmissibility found by the consulate. The client was not allowed to re-enter the United States and had to remain in the foreign country, separated from their family in the U.S. throughout this process.

4. In the case of denials for the public charge ground of inadmissibility, 8 USC 1182(a)(4)(A), the consular official remained unsatisfied with the additional sources of support and affiants to additional Affidavits of Support, resulting in a consular denial of indefinite duration. Again, the client was not allowed to re-enter the United States and had to remain in the foreign country, separated from their family in the U.S. throughout this process.

5. Moreover, the reconsideration process is extremely complex to navigate

even for the most seasoned attorneys. It requires multiple emails, phone calls, and letters to try and navigate the consular offices. Indeed, each Consulate has its own set of rules.

6. It is clear, that should an individual be denied for a failure to obtain health insurance, under the "new" policy, that any waiver obtain prior to removal will be cancelled, and will result in significant, if not permanent, delay in returning to the United States under the approved immigrant visa.

7. The idea that the refusal of an immigrant visa at the interview and the subsequent opportunity for additional information through "visa reconsideration" is timely and would not harm the applicant is simply false. Even in those cases in which individuals have overcome initial "public charge" grounds of inadmissibility, consular reconsideration has taken months, and in one case almost 10 months, prior to the grant of the immigrant visa stamp and reentry into the United States.

8. These extraordinary and unnecessary delays result in extreme family suffering and hardship, loss of income (in many cases the primary source of income), and the need for US family to use government assistance.

Verification

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on November 6, 2019,

Charles H. Kuck

EXHIBIT 14

The Honorable Michael H. Simon

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

NO. 3:19-cv-01743-SB

DECLARATION OF PAM MACEWAN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
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I, Pam MacEwan, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein and make this declaration based on my personal knowledge.

2. I am the Chief Executive Officer (CEO) of the Washington Health Benefit Exchange ("WAHBE" or "the Exchange"). I have held this position since 2015. Before leading the organization as the CEO, I served as Chief of Staff from 2012 to 2015. In that role I served as the principal strategic advisor to the CEO and assumed day-to-day responsibility for operations of the Exchange. I have 25 years of experience in healthcare management.

3. I am submitting this declaration in support of the Plaintiffs' Motion for Preliminary Injunction filed in response to the newly issued "Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System" ("PP 9945" or "the Proclamation") and "Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage" ("Emergency Notice").

4. As I understand the Proclamation and the Emergency Notice, those seeking visas who are not exempted can have their application denied unless they demonstrate that they "will be covered by approved health insurance" within 30 days of entry into the United States by providing specific plan details, or "possess the financial resources to pay for reasonably foreseeable medical costs." This creates a catch-22 under existing federal law: visa seekers cannot access individual market coverage through Marketplaces (like WAHBE) without verifying residency and lawful presence through a strict eligibility process, however, those seeking to establish residency and lawful presence through proper immigration channels cannot do so without verifying insurance status. As a result, individuals who otherwise could become lawfully-present immigrants and qualify for health insurance through WAHBE will be barred from both aims.

5. WAHBE is Washington State's health insurance exchange, or insurance marketplace. WAHBE was established in 2011 under the Patient Protection and Affordable Care Act (ACA) and state legislation, Wash. Rev. Code § 43.71. WAHBE is a self-sustaining,

public-private partnership governed by an 11-member bipartisan board. WAHBE operates Washington Healthplanfinder (www.wahealthplanfinder.org), the online portal used by one in four Washington residents to obtain Washington Apple Health (Medicaid) and commercial medical and dental insurance. About 1.5 million Washington residents use Washington Healthplanfinder to obtain Medicaid. Another 200,000 residents use Washington Healthplanfinder to obtain commercial medical and dental insurance in the individual market, which represents about 80% of the total individual market in Washington. About 65% of commercial Exchange enrollees receive premium tax credits.

6. Over 24,000 lawfully-present residents receive commercial coverage through Washington Healthplanfinder, and 84% of those lawfully-present residents receive premium tax credits. Lawfully-present enrollees represent 13% of the total residents receiving commercial coverage through Washington Healthplanfinder.

7. Since implementation of the ACA and formation of the Exchange, the uninsured rate in Washington State has declined from 13.9% in 2012, to 5.5% in 2017.

8. PP 9945 will introduce significant risks to the hard-won progress our state has made to reduce the uninsured rate and ensure all lawfully-present residents have access to affordable health care. It will harm visa-seeking immigrants and their families by precluding them from getting affordable, comprehensive coverage through WAHBE and instead steering them toward coverage that is not ACA-compliant. The Proclamation is therefore likely to harm the Exchange by reducing enrollment and undermining the stability of the commercial health insurance market. The Proclamation is also likely to harm the state by increasing uncompensated care -- for which the state will likely bear the cost -- and adversely impact the broader state economy.

9. The Proclamation contemplates that only certain types of commercial coverage, such as employer-sponsored plans, unsubsidized[1] Exchange marketplace plans, short-term limited

[1] "Unsubsidized" is not defined in the Proclamation.

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duration insurance (STDLI) plans effective for at least 364 days, and catastrophic plans, among others, are qualifying types of coverage. Procuring unsubsidized marketplace plans presents practical challenges, if not the impossibility, of establishing proof of such coverage while abroad. Under federal law and regulations associated with the Affordable Care Act, an individual applying for commercial unsubsidized coverage through a Marketplace must establish residency in that state as well as lawful presence. 42 U.S.C. §18032(f), 45 C.F.R. § 155.305(a)(3). This contradicts the Proclamation's supposition that the individual could have already obtained such coverage or would be able to prove that it is forthcoming in order to obtain a visa to enter the country.

10. Because visa-seeking immigrants residing abroad cannot obtain health insurance through the Exchange, PP 9945 undermines the health of Washington's individual insurance market, potentially impacting the affordability of coverage for lawfully-present residents and citizens alike.

11. Lawfully-present enrollees are more likely to represent 'favorable' insurance risk, because they are often younger, healthier, or lower-than-average utilizers of health care services when compared to the general insured population. Several studies have concluded that immigrants are net contributors to both private coverage and Medicare, paying more in insurance premiums than they receive in benefits.[2] Reduced enrollment among lawfully-present enrollees will result in a sicker risk pool and could increase premium costs for all remaining residents enrolled in commercial insurance coverage through Washington Healthplanfinder. Increased premiums lead to higher rates of uninsurance, which in turn leads to increases in uncompensated care throughout the state.

12. It is also troubling that the Proclamation seeks to permit STLDI coverage, which does not comply with ACA consumer protections or those codified in Washington state law, to

[2] Zallman, L., Woolhandler, S., Touw, S., Himmelstein, D.U., and Finnegan K.E. (2018). Immigrants pay more in private insurance premiums than they receive in benefits. Health Affairs 2018 37:10, 1663-1668.

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qualify as "acceptable" coverage. State law limits the maximum duration of STLDI plans offered in Washington to three months (Wash. Admin. Code 284-43-8000). This creates a further catch-22 for visa applicants, as the Proclamation recognizes only STLDI plans that are "effective for a minimum of 364 days," but those plans do not, by law, exist in Washington State.

13. STLDI plans have been widely demonstrated to lack critical comprehensive coverage[3] and can be prohibitively expensive for individuals with pre-existing conditions.

14. PP 9945 will divert lawfully-present immigrants from meaningful, comprehensive coverage offered through the Exchange, toward companies that engage in medical under-writing, spend the majority of premium revenue on non-medical expenses, and are known to exclude core benefits like maternity, mental health and substance abuse disorder treatments, which threatens both the health and financial well-being of this population.

15. Diverting consumers to STLDI plans could lead directly to increased uncompensated care costs for the state when the medical care these customers need is not covered or exceeds their coverage limits, not to mention when these customers lose their coverage after only three months (importantly, loss of STLDI coverage is not a qualifying event, so it does not trigger a special enrollment period, which is the mechanism that allows customers to get Exchange commercial coverage mid-year). Without health insurance, residents are less likely to receive the health care services they need to stay healthy. Uninsured individuals have more absences from work and school, and they are more likely to delay preventive or chronic condition care more often, resulting in poorer health outcomes. Foregoing preventative care also results in more emergency room visits and other forms of uncompensated care.

16. General fear and confusion about these new public charge related rules, including

[3] A Kaiser Family Foundation analysis of STLDI sold in 2018 shows that 43% did not cover mental health services, 62% did not cover services for substance abuse treatment, and 71% did not cover outpatient prescription drugs. No plans covered maternity care. These policies had out-of-pocket maximums as high as $30,000 and lifetime limits on care ranging from $250,000 to $2 million. *See*: Karen Pollitz *et al*., Understanding Short-Term Limited Duration Insurance, Kaiser Family Foundation (Apr. 2018).

the Proclamation, could also cause lawfully-present residents, including those sponsoring impacted visa applicants, to drop their current health coverage or choose not to apply for coverage for themselves and their family members through the Exchange. WAHBE contracts with community-based assisters who provide in-person enrollment assistance to health insurance applicants. These assisters report that lawfully-present individuals and families with lawfully-present members are hesitant to apply for coverage or keep their current coverage. One assister organization reported that over 400 of the lawfully-present residents they work with have dropped benefits in 2019 due to public charge fears. From February 2019 to September 2019, Exchange data shows that over 2,000 lawfully-present enrollees have disenrolled from Exchange coverage.

17. The potential loss of Exchange enrollment due to the Proclamation and Emergency Notice also threatens the Exchange's own sustainability. Any loss of enrollees will lower WAHBE's revenues because WAHBE's operations are mostly financed through fees paid by carriers. Federal and state laws authorize user fees on carriers that offer plans on the Exchange. 45 C.F.R. §§ 155.160, 156.50; Wash. Rev. Code §§ 43.71.080, 48.14.020(2)(b), 48.14.0201(5)(b). Carriers are taxed two percent on the value of premiums paid and are charged a flat per-member per-month assessment for enrollees on the Exchange. These premium taxes and assessments are deposited in the state treasurer's health benefit exchange account. Wash. Rev. Code § 43.71.060(2).

18. For state fiscal year 2019 (July 2018 to June 2019), the Exchange revenues related to QHP premiums and assessments were $36.1 million, and projected revenues for state fiscal year 2020 (July 2019 to June 2020) are $31.2 million. Lawfully-present residents represent 13% of the total residents receiving commercial coverage through Washington Healthplanfinder. A 13% reduction in QHP enrollment could decrease state fiscal year 2020 revenues by approximately $4.1 million using 2019 premium tax rates. The exact amount of enrollment loss cannot be precisely calculated, but a*ny* decline in enrollment will reduce the Exchange revenue.

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Further, if premium tax funds are not available as a state Medicaid match, additional state general fund dollars would be needed to replace those premium tax funds to support the Exchange's costs for enrolling Medicaid applicants through the shared on-line portal.

19. In conclusion, the Proclamation and Emergency Notice will likely place many visa applicants in an untenable position in which they may be unable to access *any* coverage sufficient to satisfy the Proclamation's requirements, while any authorized coverage they are able to access will likely be deficient, leading to increases in uncompensated care. The Proclamation will also harm access to healthcare for the lawfully-present population, the stability of the Washington health insurance market, and the Exchange's financial sustainability.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on November 7, 2019, in Olympia, Washington.

PAM MACEWAN

Chief Executive Officer

Washington Health Benefit Exchange

EXHIBIT 15

Stephen Manning (SBN 013373)
stephen@innovationlawlab.org
Nadia Dahab (SBN 125630)
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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF SARAH LUECK IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

DECLARATION OF SARAH LUECK

I, Sarah Lueck, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a Senior Policy Analyst at the Center on Budget and Policy Priorities ("CBPP"), headquartered in Washington, DC. CBPP is a non-partisan research and policy institute that purses federal and state policies designed both to reduce poverty and inequality and to restore fiscal responsibility in equitable and effective ways. We apply our deep expertise in budget and tax issues and in programs and policies that help low-income people, in order to help inform debates and achieve better policy outcomes.

2. In particular, our work includes research and analysis of budgets, taxes, low-income programs, and social insurance programs to ensure that programs serving low- and moderate-income people are adequately funded, accessible, and effective in helping beneficiaries meet basic needs while moving toward self-sufficiency. The scope of our work on low-income programs includes low-income tax credits, food assistance, family income support, low-income housing, and health care policy.

3. With respect to our work in health care policy, we strive to ensure that Medicare, Medicaid, the Children's Health Insurance Program ("CHIP"), and the Affordable Care Act ("ACA") provide coverage that meets the needs of low-income children and families, seniors, and people with disabilities. We also work to ensure that proposals that would affect these programs do not slash benefits for, or impose costs on, the nation's most vulnerable people.

4. We at CBPP are familiar with the Presidential Proclamation entitled "Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States," signed by President Trump on October 4, 2019 (the "Proclamation"). Because of our focus on helping people access and maintain comprehensive health coverage through programs including Medicare, Medicaid, CHIP, and the ACA, the Proclamation raised immediate concern.

5. The Proclamation would require certain groups of intending immigrants to meet its new health coverage mandate or be denied entry into the United States. But only some types of coverage would count toward the mandate. Medicaid and subsidized coverage that individuals buy through ACA health insurance marketplaces would not. So-called short-term health plans would.

6. The purported rationale for the new health insurance mandate is that it will protect America's health care system and taxpayers from the burdens of uncompensated care. But the policy could easily *increase* uncompensated care, in two main ways.

7. First, the new policy adds to the climate of fear and confusion that discourages families that include immigrants from enrolling in public coverage programs for which they're eligible. While the proclamation only states that Medicaid and subsidized marketplace plans do not count toward the mandate, some families will likely believe that signing up

for these plans could prevent them or their family members from immigrating to the United States. Moreover, some people who wouldn't be subject to the assessment may nonetheless fear signing up for coverage that won't meet this new mandate. For example, a family may not sign their children up for Medicaid because they fear it could leave a parent unable to immigrate to the United States. There is strong evidence that other, similar policies have created a climate of fear that is discouraging eligible families from signing up for federal coverage programs.[*]

8. Second, the new policy steers potential immigrants and their family members away from comprehensive coverage through Medicaid or subsidized marketplace plans and toward short-term plans with large coverage gaps.

9. Short-term plans do not meet the federal standards and protections that apply to private, individual-market health plans, including ACA marketplace plans, yet separate federal rule changes that took effect in October 2018 lifted a prior three-month limit on the plans, allowing them to last up to 12 months or longer.

10. Short-term plans do not have to cover the "essential health benefits" that ACA marketplace plans are required to include and therefore often leave out essential benefits such as maternity and mental health care, substance use disorder treatment, and prescription drugs. In a study of short-term plans sold on two major online broker sites, 43 percent of plans didn't cover mental health services, 62 percent didn't cover substance use disorder treatment, and 71 percent didn't cover outpatient prescription drugs. No plans included maternity care.[†] Enrollees who need benefits that their plans lack would face high costs.

11. Short-term plans can charge high deductibles and cost-sharing for the benefits they do cover (i.e., a $5,000 deductible for a policy that lasts six months), exposing patients to high costs if they need care. And the plans may include dollar limits on how much they will pay out for a given service or in total for benefits over the life of the policy, or during the life of the enrollee. ACA plans, in contrast, limit people's deductibles and other out-of-pocket costs, a critical protection when someone faces catastrophically high spending, and are prohibited from imposing dollar limits on essential health benefits. And Medicaid offers comprehensive coverage with no or low cost-sharing.

12. Short-term plans can deny coverage or charge higher premiums to people with pre-existing conditions, and they typically do not cover any medical services related to a pre-existing condition. If a short-term plan enrollee receives medical care, the insurer may investigate their medical history for evidence that the care they already received is related

[*] Hamutal Bernstein *et al*., "With Public Charge Looming, One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018," Urban Institute, May 21, 2019. https://www.urban.org/urban-wire/public-charge-rule-looming-one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018

[†] Karen Pollitz *et al*., "Understanding Short-Term Limited Duration Health Insurance," Kaiser Family Foundation, April 23, 2018, https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/.

to a pre-existing condition, a practice known as "post-claims underwriting." In one case, a Georgia woman who was diagnosed with breast cancer after she bought a short-term plan was then left with $400,000 in medical bills because the insurer said the disease pre-dated the coverage.[‡]

13. A recent review of select short-term health plans available in Philadelphia concluded that even when people experience *unanticipated* illnesses, clearly unrelated to a pre-existing condition, the coverage available under short-term health plans was so sparse that enrollees would face large out-of-pocket charges. For example, one Philadelphia plan limited coverage of hospitalization to no more than $1,000 per day, far less than the U.S. average cost of more than $5,000 per day. Another Philadelphia plan limited benefits for an appendectomy to $2,500, when the average cost of that procedure is nearly $14,000.[§]

14. Another study found that a sample person who enrolls in a short-term plan and then is diagnosed with breast cancer (after having no history of the disease) could expect to pay roughly $40,000 to $100,000 for treatment, in addition to premiums -- far more than under ACA marketplace plans, which include more robust benefits and limit each person's yearly cost-sharing to no more than $7,900.[**]

15. By discouraging families that include immigrants from enrolling in public coverage programs for which they're eligible, the Proclamation is likely to raise uninsured rates among lawfully present immigrants and potentially their U.S. citizen family members. Our research finds a very strong relationship between uninsured rates and uncompensated care costs.[††]

16. In addition, by prodding more people into short-term plans, the Proclamation will leave more people with gaps in their benefits and high medical bills. This also will increase uncompensated care, exacerbating the very problem the Proclamation purports to address.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 7, 2019 at Washington, DC.

Sarah Lueck

SARAH LUECK

[‡] Erik Larson and Zachary Tracer, "The Health Plans Trump Backs Have a Long History of Disputes," Bloomberg, October 16, 2017, https://www.bloomberg.com/news/articles/2017-10-16/trump-s-insurance-directive-renews-preexisting-conditions-fight.

[§] Jackson Williams, "Short-term health insurance coverage is almost worthless," *Philadelphia Inquirer*, July 30, 2018, http://www2.philly.com/philly/health/health-cents/short-term-health-insurance-coverage-is-almost-worthless-20180730.html.

[**] *Inadequate Coverage: An ACS CAN Examination of Short-Term Health Plans,* American Cancer Society Cancer Action Network, May 13, 2019. https://www.fightcancer.org/sites/default/files/ACS%20CAN%20Short%20Term%20Paper%20FINAL.pdf

[††] Matt Broaddus, "ACA Medicaid Expansion Drove Large Drop in Uncompensated Care," CBPP, November 6, 2019. https://www.cbpp.org/blog/aca-medicaid-expansion-drove-large-drop-in-uncompensated-care

EXHIBIT 16

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Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF LOUISE NORRIS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF LOUISE NORRIS

I, Louise Norris, hereby declare:

1. I am an independent health insurance broker based in Colorado. I have co-owned a health insurance agency, Insurance Shoppers, Inc., since 2003, and I have been researching and writing about health insurance and health care reform since 2006. I specialize in the Affordable Care Act ("ACA") and publish educational articles regularly with healthinsurance.org and medicareresources.org. I am the health insurance expert for Verywell and have written extensively for ADP, HSA Store, and various other outlets. My work has also been published by Health Affairs, and I was a panelist for a health care reform event hosted by the Brookings Institution in 2018.

2. I have reviewed and am familiar with the October 4, 2019 Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System (the "Proclamation").

3. The Proclamation states that noncitizens must either "be covered by approved health insurance" within 30 days of entering the United States, or possess "financial resources to pay for reasonably foreseeable medical costs." The Proclamation identifies eight types of "approved health insurance" plans, including "a short-term limited duration health policy effective for a minimum of 364 days – or until the beginning of planned, extended travel outside the United States;" and "a visitor health insurance plan that provides adequate coverage for medical care for a minimum of 364 days – or until the beginning of planned, extended travel outside the United States."

4. Visitor health insurance plans are in many ways similar to the sort of coverage that people could buy in the individual market before 2014, when the ACA's insurance market reforms went into effect with specific consumer protections, including essential health benefits requirements and a prohibition against denials based on pre-existing conditions. They are not, however, comparable to ACA-compliant plans (either on-exchange or off-exchange) that are currently available, or to Medicaid. This is because visitor health insurance plans largely do not cover pre-existing conditions and do not cover all of the essential health benefits that would be covered under an ACA-compliant individual market plans.

5. Visitor plans and short-term limited duration insurance ("STLDI") plans tend to follow the same general business model: providing coverage for a limited amount of time, for medical needs that arise unexpectedly after the person's coverage is in force. The amount of coverage that is actually provided depends in large part on the benefits an individual selects when he or she enrolls.

6. Visitor plans, however, can place limits on things that would be covered under ACA-compliant plans, such as injuries stemming from participation in "extreme sports" (which can include things like kayaking, martial arts, horseback riding, etc.). Most do not cover maternity care. Some provide limited care for mental health. Prescription drug coverage will vary from one plan to another, but with limited exceptions, they will generally not cover prescriptions that a person is already taking.

7. Indeed, visitor plans generally do not cover pre-existing conditions, and most will use post-claims underwriting, which means that if a person has a claim once he

or she is in the United States, the insurer will take a very close look to see if the claim could be related to anything that was pre-existing, and deny the claim if that's the case.

8. In addition to the challenges presented by visitor plans, there difficulties for intending immigrants who wish to sign up for an ACA-compliant plan under the terms of the Proclamation.

9. First, a person seeking to enroll in a new health insurance plan must normally do so during the open enrollment period, which runs annually between November 1 and December 15. Although certain life events can trigger a "special enrollment period" ("SEP") that enable an individual to enroll in a new health insurance plan outside the open enrollment period, the SEP for gaining citizenship or lawful permanent resident status only applies in the State and Federal Exchanges. Off-Exchange insurers will not recognize an SEP for a newly arrived immigrant and will not accept an enrollment application outside the standard open enrollment period.

10. In addition, the SEP for gaining citizenship or lawful permanent resident status only applies *after the fact*; it is not available in advance. This SEP is also governed by the standard rules for a policy's "effective date," or when coverage under the policy actually becomes available. This means that coverage under a policy is available on the first of the following month as long as the individual applies by the 15th of the current month. If, however, a person receives their green card on March 20th, for example, and enrolls the same day, their plan will not take effect until May 1. It will therefore be very difficult for an intending immigrant to show, under the terms of the Proclamation, that

they will be covered by an approved health insurance plan that complies with the ACA within 30 days of their entry.

11. Between the terms of the Proclamation and the existing health insurance availability, intending immigrants are in a tough position: They are required to have coverage (potentially before they even arrive in the United States), but it seems that they are largely limited to enrolling in plans that aren't considered minimum essential coverage, unless they have access to a group plan offered by a U.S. employer. Even these types of employer plans are difficult for intending immigrants to acquire within 30 days of entering the United States, given that many employers impose waiting periods before employees can qualify for employer-sponsored health insurance, and the average wait time imposed is 1.9 months.

I hereby declare under penalty of perjury that the foregoing is true and correct.

DATE: November 7, 2019

Louise Norris

EXHIBIT 17

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Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF DANIA PALANKER, JD, MPP IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND MOTION FOR CLASS CERTIFICATION

I, Dania Palanker, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am an Assistant Research Professor at the Center on Health Insurance Reforms ("CHIR") with Georgetown University's Health Policy Institute. CHIR is composed of a team of nationally recognized experts on private health insurance and health reform. We are based at Georgetown University's Health Policy Institute (HPI), and work regularly with a multidisciplinary group of faculty and staff dedicated to conducting research on issues related to health policy and health services. HPI is affiliated with the University's public policy graduate programs at the McCourt School of Public Policy.

2. If called as a witness, I could and would completely testify to the following.

A. QUALIFICATIONS

3. I have worked in health insurance policy for 19 years and worked previously for four years in health insurance benefits administration.

4. In my three years at CHIR, I analyze state and federal health insurance market reforms, including implementation of the Affordable Care Act ("ACA") and sale of health insurance products that are not covered by the ACA, such as short-term limited duration health insurance ("STLDI"), with an emphasis on insurance benefit design, access to health care, and coverage for chronic health conditions.

5. I have researched and written extensively about short-term health plans including writing reports, issue briefs, and blog posts on short-term health plans and other alternative coverage arrangements.

6. My expertise on health insurance issues is frequently sought out by state and national media, including media that focuses on health insurance issues such as Kaiser Health

News and Modern Healthcare. My research and advocacy have been cited by or I have been interviewed by the New York Times, the Los Angeles Times, Washington Post, National Public Radio, Marketplace, CNBC, Houston Chronicle, Philly Inquirer and other media outlets.

7. Before joining CHIR, I was Senior Counsel for Health and Reproductive Rights at the National Women's Law Center; the Associate Director of Health Policy for the Service Employees International Union ("SEIU"); and the Deputy Administrator of Health Benefit Funds for SEIU where I administered health benefit funds for largely low-wage immigrant populations.

8. I have additional knowledge of the health insurance exchanges and the ACA as an unpaid Standing Advisory Board member of the District of Columbia Health Benefits Exchange, which runs the ACA health insurance marketplace for the District of Columbia. I serve as the Chair of Plan Standardization Workgroup and have been involved in policy decisions related to eligibility, enrollment, and sale of STLDI as well as presenting to the Standing Advisory Board on short-term health plans.

9. I have a J.D. from Georgetown University and am a licensed member of the New York bar. I also have a Masters of Public Policy from Kennedy School of Government at Harvard University.

10. I am familiar with the Presidential Proclamation entitled "Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States," signed by President Trump on October 4, 2019 (the "Proclamation") having read and analyzed the Proclamation and the types of insurance that might be available to visa applicants under the Proclamation.

B. MOST OF THE HEALTH INSURANCE OPTIONS THAT ARE SUFFICIENT FOR A VISA UNDER THE PROCLAMATION ARE NOT REALISTICALLY ACCESSIBLE TO MANY INTENDING IMMIGRANTS

11. In general, individuals are required to reside within a state before purchasing a health insurance plan. While there have been political discussions and proposals to allow the sale of health insurance across state lines, state regulators have resisted such proposals as they undermine the states' abilities to protect their residents.[1] This is because non-employment based health insurance is primarily regulated by the states. In order for states to have regulatory authority over the product, the plan must be sold and issued within the state. As a result, visa applicants are not actually able to obtain health insurance prior to moving to the United States.

12. While visa applicants may be able to choose a plan they will apply for, there is no guarantee of coverage before becoming a resident of the United States. In fact, the ACA specifically require that plans sold on the marketplace, even without a subsidy, are only eligible to lawfully present individuals. This means that an individual applying for a visa cannot be found eligible for such coverage. They can be eligible after they move to the United States.

13. The proclamation does not define "catastrophic plans" but there is a type of catastrophic plan for sale through the marketplaces. These plans are limited to enrollment by people who are under the age of 30 or who qualify for a hardship exemption. They are sold through the health insurance marketplaces so they are only available to people who are legally present and not to visa applicants. It is unclear whether the proclamation, in using the term "catastrophic plan," is referring specifically to these types of plans for sale through the marketplaces, or generically to certain high deductible plans.

[1] Sabrina Corlette & Kevin Lucia, *Reading The Fine Print: Do ACA Replacement Proposals Give States More Flexibility And Authority?*, Health Affairs Blog (Feb. 23, 2017), https://www.healthaffairs.org/do/10.1377/hblog20170223.058888/full/.

14. The two main exceptions are employer based coverage, if an applicant knows that they are eligible for coverage through their employer or as a dependent of an employee, and visitors insurance.

15. There are some potential concerns with timing of employer based coverage that could push applicants to have to purchase travel insurance as the only option. Employers are allowed to have a waiting period of up to 90 days before coverage begins. According to the Kaiser Family Foundation, 71% of covered workers had a waiting period before coverage could begin in 2018 and the average waiting period is 1.9 months.[2] This means that visa applicants with a job providing health insurance in the United States may still not be able to rely on their employer health benefits to meet the requirements of the proclamation and would have a gap in coverage before the 30-day requirement. The gap may be longer if immigrants choose to move to the United States before the start date of a job in order to settle into the new country.

16. Only some family members are allowed to join health plans under insurance regulations and plan rules. In general, a family member needs to be a spouse or dependent child up to the age of 26. Adult children over 26 cannot be added to most health plans, including employment-based plans, unless there is a rare special eligibility rule by that plan or the adult child is a dependent due to disability. Grandchildren cannot be added to a health plan unless the grandparent is the legal guardian and grandparents, aunts, uncles, siblings and other family members cannot be added to health plans.

17. STLDI plans are not available in all fifty states. California explicitly bans short-term plans in part because of concerns about the limitations in STLDI plans that were sold in the

[2] The Kaiser Family Foundation, *Employer Health Benefits – 2018 Annual Survey*, http://files.kff.org/attachment/Report-Employer-Health-Benefits-Annual-Survey-2018.

state.[3] Four other states prohibit the sale of underwritten STLDI plans, which means no plans are being sold on the market. These states are Massachusetts, New Jersey, New York, and Rhode Island.[4]

18. Twenty states limit the duration of short-term plans making it impossible for individuals to enroll in one plan for the required time limit in the proclamation. Nineteen of these states limit the initial contract term to 11 months or less.[5] In addition, Maine requires all STLDI plans to have an end date of December 31, making it almost impossible to have a plan for 364 days.

19. Some STLDI may not even be available to recent immigrants to the United States that are applying for a change in visa status. A part of the application for STLDI for United Health One ask "Has any applicant lived in the 50 states of the USA or the District of Columbia for less than the past 12 months?"

20. If short-term carriers are able to find a way to sell plan to people before they receive their visa, STLDI are not available to people with many medical conditions, or even symptoms of medical conditions. Applicants can be denied coverage because in the last five

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[3] Georgetown Univ., *Short-Term Plans Could Bring Long-Term Risks to California's Individual Market*, CALIFORNIA HEALTH CARE FOUNDATION (Apr. 27, 2018), https://www.chcf.org/publication/short-term-plans-long-term-risk-california/; and

Dania Palanker et al., *States Step Up to Protect Insurance Markets and Consumers from Short-Term Health Plans*, THE COMMONWEALTH FUND (May 2, 2019), https://www.commonwealthfund.org/publications/issue-briefs/2019/may/states-step-up-protect-markets-consumers-short-term-plans.

[4] The Commonwealth Fund, *What Is Your State Doing to Affect Access to Adequate Health Insurance?* (Nov. 4, 2019), https://www.commonwealthfund.org/publications/maps-and-interactives/2019/nov/what-your-state-doing-affect-access-adequate-health.

[5] The Commonwealth Fund, *What Is Your State Doing to Affect Access to Adequate Health Insurance?* (Nov. 4, 2019), https://www.commonwealthfund.org/publications/maps-and-interactives/2019/nov/what-your-state-doing-affect-access-adequate-health.

years they showed signs or symptoms of a variety of health conditions. For example, one carrier lists among many other conditions: chest pain, degenerative joint disease, diabetes, or any neurological disorder. I note that "chest pain" is not limited in this application to heart disease related "chest pain" and could therefore include one instance of heart burn, a pulled muscle in the chest, or an engorged nipple when breast feeding. Symptoms of diabetes are broad and can include symptoms that do not mean an individual is sick, let alone has diabetes. Technically, a person should answer that they did have signs of diabetes if they had some nausea and weight loss and that would trigger denial of coverage.

21. STLDI are also unavailable to individuals starting or trying to start a family. The first question on applications is often whether the applicant is pregnant, undergoing fertility treatment, in the process of adoption, or an expectant father. An answer of yes typically results in denial of coverage.

22. I am aware of one carrier that offers coverage in multiple states on a guaranteed basis, but preexisting conditions are still excluded from coverage and total covered benefits are limited to $100,000, compared to limits of $250,000 to $1 million in the insurers' other STLDI.[6]

23. If a visa applicant cannot satisfy the Proclamation's health insurance requirement, they may still receive a visa if they can show, to a consular officer's satisfaction, that they have sufficient "financial resources to pay for reasonably foreseeable medical costs" out of pocket. The Proclamation does not define "reasonably foreseeable medical costs," however, and it is unclear when a visa applicant will be able to meet this standard, especially in light of the fact that consular officers likely do not have serious medical training to assess an applicant's medical

[6] National General, *Short Term Medical Brochure* (May 25, 2018), https://www.ehealthinsurance.com/ehealthinsurance/benefits/st/NationalGeneralAccidentandHealth/NGAH-STMASSOCIATIONBRO-2.05.25.18.pdf.

condition. The State Department's October 29, 2019 Emergency Notice requesting approval for a new information collection required to implement the Proclamation's requirements defines "reasonably foreseeable medical costs" as "those expenses related to existing medical conditions, relating to health issues existing at the time of visa adjudication," but this Notice provides no information, guidance, standards, or procedures on how consular officers would go about interpreting or applying that definition, or how they would assess an applicant's financial resources under that definition. Nor does the Notice provide guidance on the scope of what "medical conditions" or "health issues" may be relevant.

C. SHORT-TERM LIMITED DURATION INSURANCE DOES NOT PROVIDE COVERAGE FOR FORSEEABLE HEALTH NEEDS OR PROTECT AGAINST UNCOMPENSATED CARE

23. STLDI are plans that were initially designed for brief gaps in coverage. These are insurance plans that are not designed to be comprehensive in nature or to meet all foreseeable medical expenses. Individuals enrolled in such plans are likely to face significant uncompensated care costs if they have an unexpected health event.

24. Health questionnaires on the applications are also used for post claims underwriting. A review of case law and media accounts find multiple instances of enrollees having coverage rescinded after filing a high cost claim, such as for cancer. In such instances, the insurers look back to the initial health questionnaire and assert that the enrollee should never have been issued the plan because the questionnaire was answered incorrectly. The so-called incorrect answer could be a result of the enrollee not being aware of a sign or symptom of a condition or not aware of all the details written in their medical record.

25. STLDI plans routinely exclude coverage for preexisting health conditions. Definitions vary by insurer, but multiple carriers include not only conditions for which an individual received medical care or diagnosis, but also conditions for which an ordinarily prudent

person would have sought medical advice, diagnosis, care, or treatment within a specified time period. Insurers routinely consider a pregnancy preexisting if the enrollee was pregnant on the coverage start date, regardless of whether the enrollee was aware she was pregnant. The plans therefore exclude services related to complications of the pregnancy that otherwise would have been covered. There is one insurer that recently introduced a product to cover some preexisting conditions, but applicants must still pass underwriting and the maximum covered for preexisting conditions per contract term is $25,000.[7] Given that the average cost of a three-day hospital stay is about $30,000, enrollees with this type of coverage can quickly find it insufficient to meet their needs.[8]

26. In general, STLDI benefits are well below the benefits provided in individual market health insurance. A study by the Kaiser Family Foundation found no STLDI plans available in 2018 covered maternity (except for complications of pregnancy), 71 percent did not cover outpatient prescription drugs, 62 percent did not cover substance use treatment, and 43 percent did not cover mental health services.[9]

27. While STLDI plans may not limit enrollees to a network, they often set the amount they will pay at an amount below the typical cost of services. Some STLDI plans have very low limits for certain services. For example, two STLDI carriers offer plans that limit

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[7] The IHC Group, *Connect Plus Brochure* (Aug. 2018), https://www.ihcmarketplace.com/ViewApp/GetBrochure/STI/FL/Connect%20STM/15.

[8] U.S. Dept. of Health and Human Services, Centers for Medicare and Medicaid Services, Center for Consumer Information and Insurance Oversight, *Why Health Insurance is Important*, https://www.healthcare.gov/why-coverage-is-important/protection-from-high-medical-costs/ (last visited Nov. 8, 2019).

[9] Karen Pollitz et al., *Understanding Short-Term Limited Duration Health Insurance*, THE KAISER FAMILY FOUNDATION (Apr. 23, 2018), https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/.

inpatient hospital room and board to $1,000 and ICU room and board to $1,250 and one places a $5,000 limit on surgeon and anesthesiologist fees for a surgery. Other dollar value limits in STLDI plans are a $250 limit on ambulance services (the fee for ambulance transports in Houston, TX begin at $1,876.40)[10], $10,000 limit on HIV or AIDS related services (the estimated the annual cost of HIV treatment was $23,000 in 2010)[11], and $150,000 limit on transplant related services (estimated average billed charges for a kidney transplant in 2017 was $414,800 and estimated average billed charges for a liver transplant in 2017 was $812,500).[12]

28. In addition to dollar limits, plans limit the maximum allowable amount that is reimbursable to a reasonable and customary charge that is determined by the insurer. When there are no networks, and therefore no contracts between providers and the insurer, the provider can balance bill the enrollee for the difference between the total bill and the amount covered by the plan. I am aware of one instance in which a plan paid only $11,780 of $211,690 in charges following heart surgery because charges exceeded maximum allowable amounts and benefit limits.[13]

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[10] City of Houston, *City Fee* Schedule, http://cohweb.houstontx.gov/FIN_FeeSchedule/default.aspx (last visited Nov. 8, 2019).

[11] Kelly Gebo et al., *Contemporary Costs of HIV Health Care in the HAART Era*, NATIONAL INSTITUTE OF HEALTH, 24 AIDS 2705 (2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3551268/pdf/nihms244848.pdf.

[12] T. Scott Bentley and Steven Phillips, *2017 U.S. Organ and Tissue Transplant Cost Estimates and Discussion*, Milliman Research Report (Aug. 2017), http://us.milliman.com/uploadedFiles/insight/2017/2017-Transplant-Report.pdf.

[13] Cheryl Fish-Parcham, Comments Submitted to Short-Term, Limited-Duration Insurance, 83 Fed. Reg. 7437 (proposed Feb. 21, 2018), https://www.regulations.gov/document?D=CMS-2018-0015-8801; and

Email from Cardiss Jacobs, Associate Health Care Ombudsman, Office of the Health Care Ombudsman and Bill of Rights, District of Columbia Government (May 22, 2018, 11:20 EDT) (on file with author).

29. STLDI plans are often sold through associations or "discretionary group trusts." A "discretionary group trust" is a legal structure that allows for the sale of insurance to individuals as a group policy. In these instances, the master contract is held by the association or trust and issued in the state in which the association or trust is situated, rather than where the enrollee resides. Regulators in the state in which the enrollee resides may not have the authority to enforce law if the plan improperly denies a claim or otherwise violates state law. In some instances, plan documents may not be filed with the state in which the enrollee resides and state regulators may be unaware the plan is being sold within their state.

30. One plan I analyzed for sale in Texas has numerous coverage limitations. Plans offered by this insurer include a $1,000 limit on a standard hospital room, $1,250 limit on an intensive care unit hospital room, $50 per day limit on inpatient doctor visits, and $250 limit per ambulance transport. These plans only cover three office visits per contract term and also have no coverage for maternity or outpatient prescription drugs. While these plans do cover mental health and substance use services, the reimbursement amounts are well below the cost of services and not in parity with other coverage. Outpatient mental health and substance use services are reimbursed at a maximum of $50 per visit and inpatient services at a maximum of only $100 per day.[14]

[14] LifeShield National Insurance Co., *Smart Term Health Lite Short Term Medical Brochure* (Mar. 9, 2018), https://www.ehealthinsurance.com/ehealthinsurance/benefits/st/LifeShield/Brochure_w_association_06_18.pdf.

D. VISITORS INSURANCE DOES NOT PROVIDE COVERAGE FOR FORSEEABLE HEALTH NEEDS OR PROTECT AGAINST UNCOMPENSATEDCARE

31. Visitors insurance is primarily designed for people visiting the United States and not for people expecting to be long term residents. These plans generally have various limits that may not be easily understood to people unfamiliar with health costs in the United States. For example, a brochure for one carrier appears to offer very comprehensive coverage, but the summary of benefits is not clear if it pays for inpatient hospital services not specifically listed.[15] While the summary of benefits does list a maximum reimbursement for hospital room and board and information on surgeon fees, it is not clear if all inpatient hospital services that would traditionally be covered by an insurance plan on the individual market in the United States are covered. This could potentially leave enrollees with tens of thousands in uncovered costs. This plan also has a $50,000 lifetime maximum on preexisting conditions which means an individual that has a very high cost surgery, such as a ten-hour heart surgery, could face tens of thousands of dollars in uncovered costs if the heart condition is determined to be a preexisting condition.

32. The plans appear to be what is known as fixed indemnity coverage, which is insurance that pays a fixed dollar amount for every covered service which can be well below the actual cost of service. For example, this carrier limits surgeon fees to between $4,000 and $7,500 per surgical session, which could be well below the cost of surgeon fees for a very long, complicated surgery. This insurer also only covers between $400 and $800 per emergency room visit, even though emergency room visits can cost thousands of dollars. Finally, the plans only cover $350 towards prescriptions during the coverage period, which would effectively leave any

[15] IMG, *Global Medical Insurance Plan Brochure* (2019), https://www.imglobal.com/docs/library/forms-library/gmi-brochure.pdf?Status=Master.

enrollee on a high cost medication without prescription drug coverage. These plans also exclude preexisting conditions, allowing applicants to purchase a rider that covers only three physician visits for the preexisting condition and limiting reimbursement for medications for preexisting conditions to $100 and limiting reimbursement or for emergency room or inpatient services to $1000 for preexisting conditions, therefore effectively not covering hospitalization for preexisting conditions.

33. Visitors insurance plans either exclude coverage for preexisting conditions or significantly limit coverage for preexisting conditions. For example, one plan covers acute onset of preexisting conditions with a maximum covered up to $125,000, but only $36,000 for cardiac or stroke.

34. In addition, if an individual is hospitalized and the term of their travel insurance expires during the hospitalization, they may be left with uncompensated care if they are unable to renew the policy. This is the situation that left a Canadian woman with almost $1 million in medical costs not covered by visitors insurance when she went into preterm labor with complications while visiting the United States.[16]

E. THE PROCLAMATION ALLOWS FOR INSURANCE THAT IS NOT SUBJECT TO JURISDICTION OF THE UNITED STATES

35. Immigrants shopping for health insurance outside of the United States are shopping outside of the jurisdiction of the United States federal government and state governments (states). The states' consumer protection laws, including laws protecting consumers from misleading or false advertising by insurance brokers and agents, requirements that agents

[16] CBC News, *Jennifer Huculak-Kimmel billed $950K US after giving birth in U.S.* (Nov. 19, 2014), https://www.cbc.ca/news/canada/saskatoon/jennifer-huculak-kimmel-billed-950k-us-after-giving-birth-in-u-s-1.2839319.

and brokers selling insurance be licensed by the states, and requirements that insurance products being marketed as insurance be licensed by the states do not reach the sale of insurance in different countries.

36. States are already expressing concern about misleading or fraudulent sale of health insurance within the United States.[17] For individuals shopping for coverage online, if marketing practices are similar to within the United States it will make it very difficult for many visa applicants to make an informed choice. To begin with, health insurance in the United States is very complicated. There are many terms that even Americans are not always familiar with that would be foreign concepts to many visa applicants, such as "deductible," "coinsurance," "copayments," "out of pocket maximum," and "formularies." This makes the process for shopping for travel insurance online extremely difficult for visa applicants.

37. Based on my experience with the United States insurance market, I would expect to see this proclamation as an opportunity for those looking to prey on people applying for visas by either fraudulently selling what they claim to be is an insurance product or by selling subpar insurance products without disclosing the limitations of the plan or explaining how the limitations in comparison to costs of health care in the United States, which is significantly higher than the cost of care from where many individuals will be applying for visas.

[17] Dania Palanker, JoAnn Volk, Maanasa Kona, *Seeing Fraud and Misleading Marketing, States Warn Consumers About Alternative Health Insurance Products*, THE COMMONWEALTH FUND: TO THE POINT BLOG (Oct. 30, 2019), https://www.commonwealthfund.org/blog/2019/seeing-fraud-and-misleading-marketing-states-warn-consumers-about-alternative-health.

38. I have reviewed plan documents of visitor insurance plans sold to individuals visiting the United States that lists the policy holder as being a company based on the Cayman Islands and specifically noting the plan does not fall under the jurisdiction of the United States.[18]

39. State insurance regulators do not have the authority to regulate insurance that is sold outside of their state and not regulated by their state, such as a plan sold by a company based in the Cayman Islands. This means that if there is a dispute in coverage by the insured they will not be able to turn to a regulator in the state where the reside for enforcement of the insurance contract if enrolled in a visitors insurance plan not licensed and regulated by a state.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 8th day of November, 2019 in Washington, D.C.

DocuSigned by:
Dania Palanker
03B6E790575D4DE...
Dania Palanker, JD, MPP

[18] Crum & Forster, *Cover America*^{SM} *– Gold Program Summary* (2019-2020), https://www.visitorscoverage.com/policydoc/coveramerica-gold-insurance-policy-document.pdf.

EXHIBIT 18

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF STACEY POGUE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

DECLARATION OF STACEY POGUE, MPAff

I, Stacey Pogue, hereby declare:

1. I am a Senior Policy Analyst with the Center for Public Policy Priorities (CPPP) in Austin, Texas. CPPP was founded by the Benedictine Sisters of Boerne, Texas in 1985 to advance public policy solutions for expanding access to health care for low-income and other disenfranchised Texans. CPPP became an independent, tax-exempt research and policy organization in 1999. Since our founding, CPPP has worked to promote policies that would expand access to affordable and adequate health coverage to improve both health care access for and financial security of Texas families. CPPP's research is frequently cited by policymakers and the media. Policymakers, the media, and state agency staff often seek out technical assistance or advice from CPPP policy experts.

2. If called as a witness, I could and would competently testify to the following.

A. Qualifications

3. At CPPP, I work to improve access to health care coverage for low- and moderate-income Texans. For 11 years with CPPP, I have managed research, policy, and advocacy efforts aimed at making private health insurance coverage more affordable and accessible to lower income Texans and improving consumer protections in health care coverage, so it provides meaningful financial security.

4. I have worked on policies to improve access to health coverage for Texans for 14 years. Before working at CPPP, I worked on health coverage policy in the Medicaid and CHIP Division of the Texas Health and Human Services Commission and

at the Texas Department of Insurance. I have an undergraduate degree from Texas A&M University and Master's in Public Affairs from LBJ School of Public Affairs at the University of Texas at Austin.

5. In 2004-05, I worked with the Texas Department of Insurance to research coverage in and access to student health insurance policies. Before the Affordable Care Act passed, student health insurance policies shared many features with short-term, limited duration health insurance coverage such as limited benefits, broad and numerous exclusions, and policy maximums. As part of my research, I surveyed insurers, colleges, and students, and I also read through every plan brochure or summary of coverage for plans in Texas to catalog benefits and exclusions. That work formed my graduate school thesis which was published in the Innovations in Insurance series by the LBJ School of Public Affairs[1] and also formed the bulk of a report released by the Texas Department of Insurance.[2]

6. At CPPP, I have written numerous reports, blog posts, rules comments, and other materials focused on improving access to and adequacy of private health insurance. Attached to this Declaration as Exhibit A is a true and correct copy of my resume, which lists many of my reports.

7. I have been selected twice, in 2010 and 2011, by the National Association of Insurance Commissioners to serve as a funded consumer representative. I have also been appointed by the Texas Commissioner of Insurance to serve on the Utilization

[1] Pogue, S. "Covering Uninsured College Students in Texas, the Role of Student Health Insurance," Innovations in Insurance, LBJ School of Public Affairs Special Project Report, 2005.

[2] Texas Department of Insurance, "Insurance Options for College Students in Texas: A Study of Student Health Insurance Plans," November 2005.

Review Rule Advisory Committee and the Independent Review Organizations Advisory Group.

8. I frequently give public testimony including invited testimony to the Texas Legislature on private health insurance issues that affect consumers, particularly low-income consumers. I have also provided testimony to the Texas Department of Insurance during rulemaking hearings.

9. My expertise on health insurance issues is frequently sought out by Texas and national media. My research and advocacy have been cited by the New York Times, National Public Radio, the CBS Evening News, the Atlantic, Vox, Houston Chronicle, Dallas Morning News, Austin American Statesman, San Antonio Express News, and other media outlets.

10. As part of my job, I stay up-to-date on federal and state changes that affect the availability, affordability, and adequacy of private health insurance, particularly of plans sold in the individual market and through the Health Insurance Marketplace.

11. In October 2018, I read through all of the plan brochures for short-term, limited duration health insurance for sale in Houston and Austin, Texas through ehealthinsurance.com, a prominent online "web-broker" that markets both ACA-compliant and short-term, limited duration health plans to individuals. It has been approved by the Center for Medicare and Medicaid Services as a registered web-broker that can offer "direct enrollment" in qualified health plans through a website other than HealthCare.gov.[3] The multiple available plan offerings I reviewed were underwritten by

[3] Centers for Medicare and Medicaid Services, "July 2019 Direct Enrollment Web-broker Public List," July 12, 2019, https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/July-2019-Public-WBE-List.pdf.

five different insurers. I analyzed plan benefits and exclusions to gain an understanding of the scope of and limits to coverage available. I have also researched policies enacted by states that restrict sales of short-term plans beyond what is allowed under federal rule.

12. In preparing to give this declaration, I reviewed the Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System (the Proclamation) and the Motion for a Temporary Restraining Order. I also reviewed my previous work on short-term, limited duration health plans and information and coverage available on websites that market visitor medical insurance.

B. Observations and Opinions

13. In my opinion, the limited "approved health insurance" options in the Proclamation are counterproductive to achieving the Proclamation's goal of protecting the health care system and American taxpayers "from the burdens of uncompensated care." The options that would be most available to immigrants seeking entry to the United States, either legally or practically, often have very limited coverage – leaving enrollees underinsured and at risk of generating uncompensated health care. Even these limited-benefit coverage options may not be available for purchase by all immigrants due to health status and other factors.

14. The most effective way of guarding against uncompensated care, by immigrants or any other person, would be to ensure access to affordable and comprehensive health insurance. The Proclamation's exclusion of the most accessible forms of affordable and comprehensive coverage—plans in the Health Insurance Marketplace, for which Advance Premium Tax Credits are available to eligible

individuals, and Medicaid (allowed under the Proclamation only for children)—is counterproductive to achieving the stated goal of reducing uncompensated care costs.

15. The most reasonably available plans in the list of eight "approved health insurance" options for immigrants seeking entry to the United States appear to be short-term, limited duration health insurance and visitor health insurance for all of the reasons already articulated in the Motion for Temporary Restraining Order.

16. Immigrants in less-than-perfect health may be unable to buy short-term, limited duration coverage. These plans are medically underwritten, meaning an applicant has to provide information on his or her health status and can be denied coverage due to pre-existing medical conditions. Even if these plans can be purchased by people outside of the U.S., immigrants who are in less-than-perfect health may be denied a short-term, limited duration health insurance policy due to medical underwriting. Before the Affordable Care Act (ACA), plans in the individual health insurance market in most states including Texas were medically underwritten. More than one-in-four (27 percent) of U.S. adults ages 18-64 have a health condition that would result in a coverage denial under pre-ACA medical underwriting, and nearly half (45 percent) of American non-elderly families include at least one adult with a declinable medical condition.[4] Given the high rates of declinable medical conditions among non-elderly American adults, it is reasonable to assume that medical underwriting used by short-term, limited duration plans would be a significant barrier that would prevent many immigrants from purchasing

[4] Claxton, G, Cox, C, Damico, A, Levitt, L, and Pollitz, K, "Pre-Existing Condition Prevalence for Individuals and Families," Kaiser Family Foundation, October 4, 2019, https://www.kff.org/health-reform/issue-brief/pre-existing-condition-prevalence-for-individuals-and-families.

a short-term coverage. Examples of declinable conditions under pre-ACA medical underwriting include common health conditions like pregnancy, diabetes, heart disease, obesity, and mental health conditions.[5]

17. If an immigrant is in good health and is able to purchase short-term, limited duration coverage, that policy is unlikely to guard against uncompensated care in the event the immigrant experiences a serious illness or injury. Benefits in these plans are often limited and the plans contain numerous broad and unusual exclusions. None of the plans I have examined cover pre-existing conditions or maternity. Preventive care, such as immunizations, contraception, annual check-ups, is often excluded. If coverage of prescription drugs (outside of hospital confinement), mental health disorders, and substance use disorder is not completely excluded, then it is often limited by caps on the dollar amount of coverage per day or year or the number of visits covered. Short-term policies often include unusual exclusions that are not found in job-based coverage or ACA-compliant coverage. These exclusions are often related to expensive health care services and could lead to uncompensated care costs. Examples of exclusions include, no coverage for: (1) cancer that has symptoms that start between the first and 30th day of the policy; (2) certain surgical procedures during the first 6 months of the policy including hysterectomy, hernia repair, tonsillectomy, ear tubes, sinus surgery, and gall bladder surgery; (3) transplants; (4) pain disorders; (5) immunodeficiency disorders; (6) end-stage renal disease; (7) joint replacement or treatment of joints; (8) conditions of the skin; (9) self-inflicted injuries; and (10) injuries sustained while engaging is a hazardous activity, like rock or mountain climbing, hang gliding, racing any vehicle, flying in an aircraft

[5] Ibid.

(other than commercial airlines), scuba diving, riding in all-terrain vehicles, playing in interscholastic or organized competitive sports league.

18. Despite coverage in a short-term, limited duration plan, an individual could still generate uncompensated care costs in the event of serious illness or injury because of the common use "policy maximums," dollar amounts over which the health insurance will cover no additional costs, in short-term plans. Every plan I examined had one, with maximums ranging from $500,000 to $5,000,000 for the policy term. Put another way, short-term plans are designed to limit the financial exposure of the *insurer* to the detriment of the policy holder, health care providers, and taxpayers who would be on the hook to cover costs above the maximum. This structure is essentially the reverse of ACA-compliant plans and employer-sponsored plans, which cap the exposure of the *policy holder* to protect against medical bankruptcy and uncompensated care. The Affordable Care Act prohibits lifetime and annual limits in most health coverage. The ACA also requires most plans to have an out-of-pocket maximum after which *the plan* must cover 100% of covered, in-network benefits.

19. If an immigrant is in good health and is able to purchase short-term, limited duration coverage, that does not guarantee that the immigrant will be able to maintain the policy for the full contract term. The Affordable Care Act prohibits rescission (retroactive cancelation of a policy back to the date of enrollment); but that protection does not extend to short-term, limited duration coverage. Before the ACA, insurers used rescission as a strategy to avoid paying for expensive health care by alleging—after the diagnosis with a serious condition or pre-approval for an expensive procedure—that the enrollee omitted information on his/her application, even if the

omission was inadvertent.[6] When a policy is rescinded, that leaves the former policyholder liable for all costs incurred during the policy term, creating the potential for significant uncompensated care costs. From recent news stories, it appears that short-term, limited duration insurers are using rescission as a tool to limit their exposure to high-cost claims,[7] a practice that will likely only increase now that short-term policies can be sold with a term of up to a year due to a 2018 federal rule change.

20. There is not, to my knowledge, a body of research on coverage in or limits to "visitor health insurance plans," the same way there is a developed body of knowledge on short-term, limited duration insurance, for example. To the degree that they are similar to short-term, limited duration health insurance, they would often have limited coverage; a policy maximum; broad exclusions including for pre-existing conditions, maternity, mental health disorders, and preventive care. These plans are not subject to the Affordable Care Act's requirements to ensure coverage is comprehensive and guards against medical bankruptcy and uncompensated care costs including: (1) coverage of Essential Health Benefits; (2) no discrimination against pre-existing conditions; (3) no lifetime, annual, or policy maximum limits to coverage; and (4) required out-of-pocket maximums to limit an enrollee's financial exposure. Given that, these plans are unlikely to be designed to provide comprehensive coverage that guards against medical bankruptcy and uncompensated care costs.

I hereby declare under penalty of perjury that the foregoing is true and correct.

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[6] NPR, "Insurers Revoke Policies to Avoid Paying High Costs," June 22, 2009, https://www.npr.org/templates/story/story.php?storyId=105680875

[7] Levy, N., "Skimpy health plans touted by Trump bring back familiar woes for consumers," *Los Angeles Times*, April 2, 2019, https://www.latimes.com/politics/la-na-pol-trump-shortterm-health-insurance-consumer-problems-20190402-story.html.

DATE: November 6, 2019

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EXHIBIT 19

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; and LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KEVIN MCALEENAN, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

DECLARATION OF JOAN WATSON-PATKO IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Joan Watson-Patko, declare as follows:

1. I am the Executive Director of the Oregon Primary Care Association ("OPCA"), headquartered in Portland, Oregon. OPCA is a non-profit membership association, founded in 1984, with a mission of leading the transformation of primary care to achieve health equity for all.

2. OPCA's members are Oregon's community health centers, also known as Federally Qualified Health Centers ("FQHCs"), other safety net clinics, and those who support them. These community health centers and clinics deliver integrated primary care, including dental and behavioral health services, to over 430,000 Oregonians annually. Our members provide care to some of Oregon's most vulnerable populations, including one in four Oregon Health Plan (Medicaid) members.

3. OPCA believes that all individuals should have access to the essentials of life, regardless of where they were born. As part of this vision, we support access to comprehensive, affordable health care and provide technical assistance, training, and policy support to our members to achieve this vision. We also partner with our members to advance the goals of health system transformation: better health, better care, lower costs, and health equity.

4. We at OPCA are familiar with the Presidential Proclamation entitled "Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States," signed by President Trump on October 4, 2019 (the "Proclamation").

5. We became aware of an Emergency Notice published by the State Department on October 29, 2019, concerning a proposed "Methodology" for implementing the Proclamation. Although the notice-and-comment period for the Notice was less than 48 hours long, we felt compelled to submit a comment because the Proclamation undermines OPCA's mission to advance health equity. By mandating that visa applicants abroad buy health insurance, the Proclamation effectively imposes a single factor wealth test that will disproportionately harm people of color. The Proclamation also threatens to undermine the nation's health and increase

uncompensated care for hospitals by restricting immigrants' ability to access comprehensive health insurance that is lawfully available to them.

6. The Proclamation's premise that lawful immigrants strain our nation's healthcare system is deeply mistaken. Lawful immigrants are not a burden to the nation's healthcare system. Indeed, evidence shows that lawful immigrants actually represent a "favorable" insurance risk because they are often younger, healthier, or otherwise lower-than-average users of health care services when compared to the general insured population. Lawful immigrants are also net contributors to private health coverage and Medicare: they pay more in insurance premiums than they receive in benefits. Lawful immigrants thus do not saddle the healthcare system with higher costs.

7. The Proclamation puts the nation's health at risk by restricting eligible individuals from accessing comprehensive health insurance, in direct violation of Congressional intent.

8. According to the Proclamation, intending lawful immigrants may not enter the United States unless they demonstrate sufficient "financial resources" to cover their reasonably foreseeable health care costs, or are "covered by approved health insurance."

9. The Proclamation's list of "approved health insurance" does not include publicly funded health benefits such as Medicaid, the Children's Health Insurance Program (CHIP), or "subsidized" comprehensive plans offered through the Affordable Care Act (ACA) marketplaces that Congress has explicitly made available to lawful immigrants. Congress's purpose in creating these publicly funded health benefits is to improve the overall health of the country by guaranteeing everyone a minimum level of health care. With this purpose in mind, Congress specifically chose to make lawful immigrants, including new and recently arrived immigrants, eligible for Medicaid, CHIP, and subsidized comprehensive coverage under the

ACA.

10. The majority of the Proclamation's "approved health insurance" options are not practically available to immigrants, such as Medicare, which requires that an individual be 65 years or older and have lived in the U.S. continuously for at least five years. Similarly, while the Proclamation approves "employer-sponsored plans," coverage under these plans is often not immediately available because employers implement a federally authorized waiting period that can last up to 90 days. Additionally, while the Proclamation lists "family member plans" as an "approved health insurance" option, family member plans only cover spouses and children under the age of 27.

11. The only "approved health insurance" options in the Proclamation that are practically available to immigrants are short-term limited duration insurance ("STLDI") and other similarly noncomprehensive plans. The Proclamation therefore restricts access to comprehensive health insurance and instead forces immigrants to subscribe to short-term insurance plans that provide minimal coverage.

12. Pushing immigrants toward these short-term insurance plans fundamentally undermines health equity by depriving individuals of adequate health coverage. It also puts the nation's health at greater risk. STLDI plans are noncomprehensive plans that leave people underinsured or effectively uninsured when medical concerns arise. STLDI plans may not cover routine medical expenses, such as the cost of prescription drugs, and may not cover emergency medical expenses, such as costs associated with hospitalization. Short-term insurance plans are frequently referred to as "junk plans" because they fail to meaningfully provide insurance coverage, including refusing to cover individuals' pre-existing medical conditions. "Visitor health insurance" plans share many of the same characteristics.

13. Under the ACA, comprehensive health insurance plans must cover a range of "essential health benefits," including coverage of patients' pre-existing medical conditions. The same requirements do not apply to STLDI and visitor insurance plans. Such plans thus regularly fail to provide coverage for prenatal and maternity care, prescription drugs, mental health care, preventive care, and certain types of accidental injury.

14. Importantly, virtually all STLDI and visitor insurance plans do not cover individuals who have pre-existing medical conditions. This restriction means that a patient with an existing condition is either ineligible for an STLDI plan or will be uninsured for any health services he receives for his pre-existing condition. Similarly, STLDI plans may deny coverage to women if they have been or plan to become pregnant; to individuals who have been diagnosed or treated for conditions such as cancer, diabetes, hepatitis, or HIV/AIDS; and to individuals who have a history of mental health or substance use disorders.

15. State governments have consistently expressed concerns about short-term health insurance plans. The state of Oregon does not allow STLDI plans to be offered for more than three months because STLDI plans are not comprehensive and do not provide adequate coverage. California, Massachusetts, New Jersey, and New York prohibit the sale of short-term health insurance policies that fail to provide coverage for pre-existing conditions. Other states including Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, New Mexico, Rhode Island, Vermont, and Washington have imposed even tighter restrictions on the sale of short-term health insurance.

16. The Proclamation claims to be motivated by a concern for uncompensated care costs and the unreimbursed expenses for health services that hospitals provide to their patients. Yet by forcing immigrants to use short-term, non-comprehensive insurance plans rather than the

comprehensive insurance for which they are eligible, the Proclamation actually risks *increasing* these uncompensated care costs to healthcare providers. Moreover, by pushing lawful immigrants to pay for short-term rather than comprehensive insurance, the Proclamation would actually increase the number of individuals who are unable to afford necessary health care costs because their medical needs are not covered by these barebones plans.

17. OPCA supports a nation where all are truly equal – including in their access to critical health services. The Proclamation undermines our mission to promote health equity for all by imposing an unwarranted barrier to lawful migration that also threatens to jeopardize our nation's overall health.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 7, 2019 at Portland, Oregon.

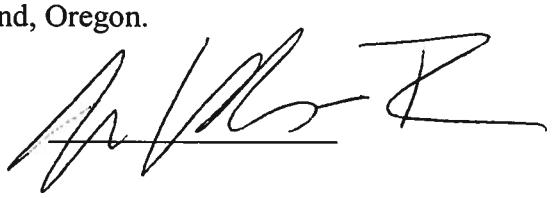

EXHIBIT 20

October 31, 2019 (Submitted Via Email)

Secretary Mike Pompeo
United States Department of State
2201 C St NW, Washington, DC 20520

Director Mick Mulvaney
Office of Management and Budget
725 17th St NW, Washington, DC 20503

Re: Notice of Information Collection Under Office of Management and Budget (OMB) Emergency Review: Immigrant Health Insurance Coverage

Dear Secretary Pompeo and Director Mulvaney,

Thank you for the opportunity to comment on the Department of State's Notice of Information Collection Under Office of Management and Budget (OMB) Emergency Review: Immigrant Health Insurance Coverage regarding Form DS-5541. We write out of deep concern and opposition to both the request for emergency review and on the underlying proposal.

Background and Expertise of APIAHF

The Asian & Pacific Islander American Health Forum (APIAHF) is the nation's leading health policy organization working to advance the health and well-being of over 20 million Asian Americans, Native Hawaiians and Pacific Islanders (AA and NHPI) across the U.S. and territories. APIAHF works to improve access to and the quality of care for communities who are predominately immigrant, many of whom are limited English proficient, and may be new to the U.S. health care system or unfamiliar with private or public coverage. We have longstanding relationships with over 150 community based organizations in 32 states, to whom we provide capacity building, advocacy and technical assistance. As such, we have a strong understanding of the needs and barriers in immigrant communities and the impact changes in immigration and public assistance policy would have on them.

For over 32 years, APIAHF has worked extensively on both the issues of immigration and health; areas of policy that this proposed rule would upend. Through research, analysis and community partnerships, these issues are the core of our expertise. APIAHF and our partners have consistently advocated for the importance of access to health care and other public assistance for all families, regardless of their citizenship status. We know from experience that access to quality health care, not burdened by obstacles like finances, means families can thrive and contribute to their communities. At the same time, we are reminded that our country has a deep history of racial discrimination that has contributed to health disparities among communities of color, including AA and NHPIs.

Two Day Comment Period Is Unacceptable

OMB should not grant emergency review of this information collection. The State Department (State) justifies the need for review based on the November 3 implementation date. However, State provides no evidence for why this implementation date is needed nor does it appear to have considered alternative dates. State does not offer any other justification for why emergency review is justified.

This Notice was published on October 30, 2019, and will close for comments on October 31. This two-day review period is not sufficient to properly review the proposed information collection implementing the Presidential proclamation. While this comment attempts, under this short time frame, to outline some initial concerns, a full 60 day or longer comment period is needed to fully understand the complex implications of this policy on the 450,500 immigrants that State has assessed it will impact, including the costs that it will lead to for immigrants, their families, and the U.S. health care system.

The 10 Minute Estimation of Completion Time Is Inaccurate

This Notice proposes that consular offices, in implementing the Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System, will ask each applicant for an immigration visa a series of questions about her plan for being covered by health insurance within 30 days of entering the United States including:

- The specific health insurance plan;
- The date coverage will begin;
- "Such other information," which is not elaborated on in the Notice; and
- Whether, if not planning to purchase health insurance, the applicant has financial resources to pay for reasonably foreseeable medical expenses.

State claims that the Average Time Per Response to comply with the Information Collection will be 10 minutes. We believe that time estimate is inaccurate, particularly given the proposed questions. This Notice requires hundreds of thousands of immigrants who otherwise may have waited until arriving in the U.S. to purchase health insurance to spend time in their home country researching their health insurance options, finding a plan that will accept customers who are not yet residing in the country and signing up. The information requested by the Notice will be impossible to provide otherwise, given that an applicant will be unable to know the start date, or even whether their chosen insurance carrier will accept them as a customer, without applying for coverage itself. This process could take hours or even days. Evaluating only the time it takes for a consular officer to ask a series of questions and not the time it takes to prepare for the set of questions is not a valid analysis of the impact of this Notice.

This Average Time Per Response not does account for the fact that many visa applicants will be unfamiliar with the U.S. health care system, which is complex due to the web of private and public insurance options, and varying eligibility for immigrants within those options.[1] Many immigrants may be coming from countries where private health insurance is not available or looks completely different.

[1] "Snapshot: Immigrant Health in the United States," Asian & Pacific Islander American Health Forum (August 2019). Available at: https://www.apiahf.org/resource/snapshot-immigrant-health-in-the-united-states/.

One review of refugees experiences found that a lack of knowledge about their host country's health care systems led to confusion and poor quality of care.[2]

A Majority of Visa Holders May Be Denied Entry

According to the Migration Policy Institute, 375,000 immigrants may be denied entry to the U.S. under the Presidential proclamation.[3] This analysis also reviews potential ways that State could implement the policy that may vary the number of immigrants impacted. This Notice, by requiring visa applicants to have pre-selected a plan, likely maximizes the number of denials that could occur.

State does not specify how or whether it will train staff to understand the different types of health insurance and whether a plan meets the conditions required under the Presidential proclamation. This means that there is potential for a visa applicant to be incorrectly denied because his officer does not understand our complex health care system. This concern is born-out by the inconsistent way the Public Charge update to the Foreign Affairs Manual has been carried out, with some countries seeing disproportionately high increases in denials.[4]

This Notice may have a disproportionate impact on immigrants from Asian and Pacific Islander countries. 31% percent of the 1.1 million immigrants receiving green cards this year are from Asia and the Pacific Islands, including 40 percent of family based immigrants and 54 percent of employment-based immigrants.[5]

The Notice Discriminates Against Limited English Proficient Populations

We are concerned this Notice will discriminate against individuals who are Limited English Proficient (LEP), meaning they speak English less than "very well." Over 6 million people of Asian and Pacific Islander background in the United States are LEP.[6] While language access protections exist for those trying to sign up for health insurance in the U.S. under Section 1557 of the Affordable Care Act, they only apply to health insurance plans that receive federal funding. However, under the Presidential proclamation, most of those plans are explicitly deemed not acceptable forms of insurance that would allow visa applicants to be admitted. The remaining options, such as Short Term Limited Duration and Travel Insurance plans, may have no or low quality information or assistance available to consumers in

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[2] Mangrio, E. and Sjögren Forss, K. (2017). Refugees' experiences of healthcare in the host country: a scoping review. BMC health services research, 17(1), 814. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5721651/.

[3] Galatt, Julia and Mark Greenberg, "Health Insurance Test for Green-Card Applicants Could Sharply Cut Future U.S. Legal Immigration", Migration Policy Institute (October 2018). Available at: https://www.migrationpolicy.org/news/health-insurance-test-green-card-applicants-could-sharply-cut-future-us-legal-immigration.

[4] Hesson, Ted, "Exclusive: Visa Denials To Poor Mexicans Skyrocket Under Trump's State Department," Politico (August 6, 2019). Available at: https://www.politico.com/story/2019/08/06/visa-denials-poor-mexicans-trump-1637094.

[5] "Public Charge Proposals is an Attack on AAPI Families," Asian & Pacific Islander American Health Forum (November 2018). Available at: https://www.apiahf.org/wp-content/uploads/2018/09/December2018_Public-Charge-Factsheet.pdf.

[6] "Protections For Language Access Are At Risk", Asian & Pacific Islander American Health Forum (August 2019). Available at: https://www.apiahf.org/resource/protections-for-language-access-are-at-risk/.

their preferred language. This may mean that either visa applicants who are LEP will be unable to find insurance, or they will find inaccurate information that leads them to purchasing insurance that is either not compliant with the Presidential proclamation or will not cover their health care needs.

In addition to our concern that this lack of support for LEP individuals may make it extremely difficult for them to comply with this Notice, it also makes it likely that they will be vulnerable to fraudulent companies and bad actors seeking to take advantage of visa applicants with low health literacy. It would be easy to set up a website in multiple languages claiming to offer health insurance for immigrants to the U.S., ask for payment up front, and then provide no or extremely low quality coverage. Because these sites may operate internationally, immigrants may have no recourse when they arrive in the country and discover their insurance does not cover what they thought it did. In one example of such fraud, British tourists to Spain paid travel health insurance companies for health insurance that did not cover services beyond those they were already covered for under the country's national health care system.[7] State provides no explanation for how or whether consular officers will evaluate whether a health insurance plan provides real coverage or not.

The Presidential Proclamation Is Incorrectly Justified

The Presidential proclamation that this Information Collection is being proposed under incorrectly justifies its need by claiming that immigrants contribute to uncompensated care costs in a significant way. The Presidential proclamation states, "While our healthcare system grapples with the challenges caused by uncompensated care, the United States Government is making the problem worse by admitting thousands of aliens who have not demonstrated any ability to pay for their healthcare costs."[8] However, the Kaiser Family Foundation has found that lawfully present immigrants make up just 15 percent of the uninsured and that immigrants may actually improve health care risk pools, lowering costs, because they tend to be younger and healthier.[9]

In fact, the Presidential proclamation may worsen uncompensated care costs by shifting immigrants from subsidized comprehensive plans under the Affordable Care Act to low-cost Short Term Limited Duration Plans, which cover much less and likely will lead to higher out of pocket costs that the customers cannot afford.[10] One health system executive recently said that, under expansion of these plans, the "longer coverage period of the policies and lack of essential coverage inherently puts health

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[7] Willmore, Simon, "Thousands of British tourists have travel insurance policies that only cover public healthcare," Travel Daily Media (July 9, 2019). Available at: https://www.traveldailymedia.com/brits-insurance-only-public-healthcare/.

[8] "Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System," The White House (October 4, 2019). Available at: https://www.whitehouse.gov/presidential-actions/presidential-proclamation-suspension-entry-immigrants-will-financially-burden-united-states-healthcare-system/.

[9] "President Trump's Proclamation Suspending Entry for Immigrants without Health Coverage," Kaiser Family Foundation (October 10, 2019). Available at: https://www.kff.org/disparities-policy/fact-sheet/president-trumps-proclamation-suspending-entry-for-immigrants-without-health-coverage/.

[10] "ACA Open Enrollment: For Consumers Considering Short-Term Policies," Kaiser Family Foundation (October 25, 2019). Available at: https://www.kff.org/health-reform/fact-sheet/aca-open-enrollment-for-consumers-considering-short-term-policies/.

systems at risk for increases in uncompensated care."[11] Given that these plans are misleadingly marketed, many immigrants may not even realize that their health insurance does not cover many medical treatments.[12]

We also express concern that other forms of health insurance that are acceptable under the Presidential proclamation, such as unsubsidized plans offered within the individual market, will be unavailable to those who are not yet residents of the U.S. Purchasing a health insurance plan that not does come with Premium Tax Credits under the ACA through the marketplaces still requires demonstration of residency in the state and county that the plan is being offered. Additionally, while employer sponsored insurance is deemed acceptable, employers are allowed to require new employees to wait 90 days until their insurance is activated.[13] This Notice says that visa applicants, however, will be required to demonstrate that they will have health insurance within 30 days of entry.

Because of the reasons described above, we believe this proposal should be withdrawn both because of the insufficient time to review and because of the irreversible flaws in the policy itself.

Thank you for your willingness to consider our comments. If you would like any additional information, please contact Ben D'Avanzo, Senior Policy Analyst, at bdavanzo@apiahf.org or 202-706-6767.

Sincerely,

Kathy Ko Chin

President & CEO
Asian & Pacific Islander American Health Forum

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[11] Kern, Howard, "Commentary: Short-term, limited-duration health plans pose risks for patients, healthcare providers," Modern Healthcare (February 23, 2019). Available at: https://www.modernhealthcare.com/article/20190223/NEWS/190229983/commentary-short-term-limited-duration-health-plans-pose-risks-for-patients-healthcare-providers.

[12] Corlette, Sabrina, et al, "The Marketing of Short-Term Health Plans," Robert Wood Johnson Foundation (January 31, 2019). Available at: https://www.rwjf.org/en/library/research/2019/01/the-marketing-of-short-term-health-plans.html.

[13] Andrews, Michelle, "A Reader Asks: Can New Employees Be Forced To Wait 90 Days For Coverage?," Kaiser Health News (June 27, 2014). Available at: https://khn.org/news/michelle-andrews-on-delays-in-employer-provided-coverage/.

EXHIBIT 21

CONSORTIUM FOR CITIZENS WITH DISABILITIES

October 31, 2019

Edward J. Ramotowski
Deputy Assistant Secretary
Visa Services
Bureau of Consular Affairs
Department of State

Department of State Desk Office
Office of Information and Regulatory Affairs
Office of Management and Budget

Regarding Immigrant Health Insurance Coverage Docket Number DOS-2019-0039 Form Number DS-5541

Dear Deputy Assistant Secretary Ramotowski:

The undersigned co-chairs of the Consortium for Citizens with Disabilities' (CCD) Health, Rights, and Long Term Supports and Services Task Forces write to express our strong opposition to the October 4, 2019 Presidential Proclamation mandating that visa applicants abroad buy certain approved health insurance and the efforts by the State Department and the Office of Management and Budget to implement the proclamation. The health insurance requirement is arbitrary and discriminatory against people with disabilities and pre-existing conditions. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

This proclamation, declaring that Medicaid coverage for adults and subsidized State marketplace plans do not meet the new health insurance requirements, will discourage many people with disabilities from lawful entry into the United States.

The proclamation restricts immigrants' ability to purchase comprehensive health insurance available through the Affordable Care Act (ACA) marketplaces, coverage that includes protections including requirements that an insurer cannot charge more or deny coverage based on a pre-existing health condition. Congress elected to make lawfully residing immigrants eligible for subsidized marketplace coverage because doing so advances the health of our nation. The proclamation puts the nation's health at risk by ignoring Congress and instead requiring individuals to buy costly and less comprehensive health coverage.

820 First Street, NE Suite 740 • Washington, DC 20002 • PH 202-567-3516 • FAX 202-408-9520 •
Info@c-c-d.org • www.c-c-d.org

Medicaid coverage for adults also does not count as approved health insurance. Medicaid remains the largest insurer in this country for the long-term services and supports, and mental health and substance use disorder treatment. . Most home and community-based services are not available through private insurance. Many people with disabilities rely on Medicaid to work, attend school, remain healthy and participate in the community with the necessary supports that many of the "approved" options will not provide.

Notably, while rejecting the types of coverage that many people with disabilities rely on for comprehensive care, the proclamation allows catastrophic coverage and short-term plans to qualify as acceptable coverage. Short-term plans, for example, lack comprehensive coverage, can be prohibitively expensive for individuals with pre-existing conditions, and can deny people coverage based on their medical history and set arbitrary service limits. This proclamation is not about protecting existing taxpayer resources or promoting health insurance. It puts a barrier between individuals and the coverage they need and for which they may be eligible, and it establishes yet another administrative hurdle to limit who can obtain a valid visa. It also encourages new immigrants who may be unfamiliar with our health care system to purchase inadequate plans that may not fit their health needs and could expose them to high financial risk after entry. In fact, encouraging immigrants to avoid comprehensive insurance that includes the benefits they need could increase uncompensated care costs when immigrants can't afford needed health care that is not covered by these bare-bones plans.

Immigrants with a disability must have a fair opportunity to enter and reside legally in the United States, without unnecessary or discriminatory restrictions based on their disability. The approved health care proclamation is another unwelcome throwback to the historical isolation, segregation and exclusion of people with disabilities. It will deny immigration to individuals based on stereotypes and fears about disability and chronic illness. The Administration should not move forward to implement this proclamation and it should be rescinded by The President.

Sincerely,

The Undersigned Task Force Co-Chairs:

Alison Barkoff, Center for Public Representation
Julia Bascom, Autistic Self Advocacy Network
David Machledt, National Health Law Program
Sarah Meek, ANCOR
Rachel Patterson, Epilepsy Foundation
Julie Ward, The Arc of the United States

EXHIBIT 22

COVERED CALIFORNIA

October 31, 2019

Edward J. Ramotowski
Deputy Assistant Secretary
Office of Visa Services
Bureau of Consular Affairs
U.S. Department of State
600 19th Street, NW
Washington, DC 20036

Dear Mr. Ramotowski:

With this letter, Covered California respectfully provides comments regarding the "Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage." Covered California is California's state-based Marketplace through which consumers can purchase affordable, high-quality health coverage. Central to Covered California's mission are efforts to enroll eligible Californians into coverage to help reduce the state's uninsured rate and maintain a healthy risk pool that makes coverage more affordable for the entire market including consumers who purchase coverage outside of Covered California. As such, Covered California has significant concerns with the recent Presidential Proclamation on the Suspension of Entry of Immigrants who will Financially Burden the United States Healthcare System (PP 9945 or Proclamation).

Since the launch of the Affordable Care Act, California has made remarkable progress in reducing the rate uninsured individuals, which has reached historic lows. Over 1.4 million California consumers are enrolled in coverage through Covered California. The strong, stable enrollment in Covered California has contributed to the state's standing as having one of the healthiest risk pools in the nation, and some of the lowest average premium rate changes in the country. This year, California enacted a landmark package of health reforms creating a state subsidy program for low- and middle-income individuals (including lawfully present immigrants) and restoring the individual mandate and penalty at the state level which is also applicable to lawfully present immigrants. These investments demonstrate California's continued commitment to expanding access to affordable coverage.

We are strongly concerned that the federal policy set forth in the PP 9945 would not only take California backward, but also the nation as a whole. The PP 9945 will undermine and introduce significant risks to efforts made to ensure all lawful residents have access to comprehensive affordable health care in California and states across the country.

Below is an outline of significant implications of the PP 9945 that merit serious consideration:

1. ***PP 9945 effectively precludes visa-seeking immigrants from gaining access to health insurance coverage through Marketplaces, directly contravening the Affordable Care Act and the stated purpose of the Proclamation itself.*** PP9945 does not contemplate its practical details of how such a policy would be carried out and does not demonstrate sufficient consideration for the procedural norms and requirements that must be carried out in the health coverage arena. For example, while the Proclamation contemplates that unsubsidized commercial coverage obtained through a Marketplace like Covered California would qualify as adequate coverage, it fails to recognize the practical challenges, if not impossibility, of establishing proof of such coverage while abroad. Under federal law and regulations associated with the Affordable Care Act, an individual applying for commercial unsubsidized coverage through a Marketplace must show proof of residency in that state, as well as lawful presence. This contradicts PP 9945's supposition that the individual could have already obtained such coverage or be able to prove that it is forthcoming in order to obtain a visa to enter the country.

   PP 9945 also creates a catch-22. Under existing federal law, immigrants cannot access insurance through Marketplaces without verifying residency and lawful presence through a strict eligibility process. However, under PP 9945, those seeking to establish residency and lawful presence through proper immigration channels cannot do so without verifying insurance status. As a result, individuals who otherwise could become lawfully present immigrants and qualify for health insurance under federal law will be barred from both aims. This paradox is contrary to federal law and does not logically follow in its practical result.

2. ***PP 9945 does not hold regard for the economic and health benefits of ensuring health insurance coverage for all immigrant residents, including the working poor who are working toward economic security.*** California has a longstanding array of public coverage programs, including the recently enacted Individual Market Assistance Program which reduces premium costs for eligible individuals with household incomes at or below 600 percent of the federal poverty level (FPL). This affordability support is available to lawfully present immigrants, at the direction of the Affordable Care Act and now under the direction of California state law. PP 9945 risks undermining those legal rights by introducing countervailing requirements potentially blocking access to such coverage. To do so undermines the health and economic security of those immigrants, their communities, and the state economy at large. Covered California's experience demonstrates that providing affordable coverage opportunities along with requiring coverage is an effective way to reduce uncompensated care costs. The Proclamation fails to acknowledge the criticality of affordable options to increasing insurance coverage rates.

3. ***Because immigrants will not be able to seek health insurance through Marketplaces, PP 9945 undermines the health of California's insurance market, potentially affecting coverage for immigrants and non-immigrants alike.*** Beyond the immediate harms to lawfully present immigrants being barred from accessing insurance through Marketplaces like Covered California, the Proclamation undermines our commercial insurance market by seeking to excise lawfully present immigrants from the coverage to which they are legally entitled. Lawfully present immigrants in California are more likely to represent "favorable" insurance risk, because they are often younger, healthier, or lower-than-average utilizers of health care services when compared to the general insured population. Several studies have concluded that immigrants are net contributors to both private coverage and Medicare, paying more in insurance premiums than they receive in benefits.

   Similarly, Covered California's own data demonstrates that its immigrant enrollees, on average, have 10 percent lower medical claims than its citizen members, a variance attributable both to the lower age of immigrant enrollees as well as lower utilization of medical services. As a result, declines in take-up or retention of immigrant coverage related to the proposed rules could have a negative impact on the overall risk pool—in turn leading to commercial market premium increases for citizens and immigrants alike. Increased premiums will lead to higher uninsured rates among all Americans, increasing the uncompensated care burden the Proclamation purports to address. By attempting to discourage immigrants from enrolling in coverage to which they are legally entitled, the action of the federal Administration and result of this Proclamation is likely to hurt Californians through increases in commercial market premiums.

   Of further concern, the proclamation seeks to permit Short-Term, Limited Duration Insurance (STLDI) coverage, which does not comply with the Affordable Care Act's consumer protections.[1] California law prohibits carriers from offering or selling STLDI in California because such products have been widely demonstrated to lack critical comprehensive coverage and can be prohibitively expensive for individuals with pre-existing conditions, and often exclude coverage of pre-existing conditions altogether. PP 9945 will divert qualified legal immigrants from meaningful, comprehensive coverage to which they are legally entitled and direct them towards companies that engage in medical underwriting, spend the majority of premium revenue on non-medical expenses, and are known to exclude core benefits like maternity, mental health, and substance use disorder treatment threatens both the individual health and financial well-being of this population. STDLI can also lead to increased uncompensated care costs when the care consumers need is not covered or exceeds their coverage limits.

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[1] Because visa applicants residing abroad cannot obtain even unsubsidized health insurance through the Marketplace until they arrive in the United States, STDLI may well be the only option available to consumers in states that allow such plans.

4. ***A two-day comment period is not sufficient for a Presidential Proclamation of this magnitude.*** PP 9945 would profoundly affect our immigration and health care systems. Two days is wholly inadequate to allow for sufficient public consideration of a policy with of this significance. The policies set forth in the Proclamation are not rooted in an emergency; and, given its sweeping impacts and likely detriments to access to coverage and market impact, the public deserves to have sufficient time to understand and accordingly comment on PP 9945.

Given all of these concerns, Covered California urges the withdrawal of PP 9945 for reconsideration of the policies therein. This policy would significantly and negatively impact California and the rest of the nation by deterring eligible individuals from getting the health care coverage they need.

Sincerely,

Peter V. Lee
Executive Director

cc: Covered California Board of Directors

EXHIBIT 23

DC Health Benefit Exchange Authority

October 31, 2019

Department of State Desk Officer
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Visa Services
Bureau of Consular Affairs
Department of State
600 19th Street NW
Washington, DC 20006

Re: Information Collection Title: Immigrant Health Insurance Coverage, DS Form Number DS-5541, OMB Control No. None, Proclamation No. 9945, 84 FR 53991 (Oct. 9, 2019); DOS-2019-0039-0001

To Whom It May Concern:

The District of Columbia Health Benefit Exchange Authority (HBX) appreciates your consideration of our comments on the above-cited Presidential Proclamation No. 9945 on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System.[1]

By way of background, HBX is a private-public partnership established by the District of Columbia (District) to develop and operate the District's on-line health insurance marketplace, DC Health Link (DCHealthLink.com). We cover approximately 100,000 people -- District residents and people who work for District small businesses. DC Health Link fosters competition and transparency in the private health insurance market, enabling individuals and small businesses to compare health insurance prices and benefits and to purchase affordable, quality health insurance. Since we've opened for business, we have cut the uninsured rate by 50% and now nearly 97% of District residents have health coverage.

We strongly oppose Presidential Proclamation No. 9945 ("Proclamation") and request it be withdrawn in its entirety. The Proclamation will undermine the District's health insurance coverage gains and access to quality, affordable health care – reversing years of progress. Additionally, the Proclamation contradicts existing federal law -- the Affordable Care Act (ACA), and its issuance is in violation of the Administrative Procedure Act (APA).

[1] Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System, No. 9945, Oct. 4, 2019. https://www.whitehouse.gov/presidential-actions/presidential-proclamation-suspension-entry-immigrants-will-financially-burden-united-states-healthcare-system/.

The Detrimental Effect on Health Coverage

The Proclamation will adversely impact the District's private individual health insurance market and hurt District residents. The District is ranked second among all states for the lowest uninsured rate and in 2019, the District had the fifth lowest average individual market premiums in the country.[2] These gains are put at risk because the Proclamation:

1. Encourages prospective immigrants to purchase junk plans like short-term limited-duration insurance (STLDI);
2. Undermines the purchase of marketplace coverage by requiring health insurance coverage be secured before entry into the United States; and
3. Seems to change, making worse already problematic guidance recently finalized in the Public Charge rule issued by the Department of Homeland Security[3] related to the purchase of subsidized private health insurance.

First, the Proclamation lists STLDI as approved coverage to meet the healthcare coverage requirements necessary for certain immigrants to enter the United States. As we noted in our comments to the Administration's rule on STLDI, these junk plans are exempt from consumer protections under the ACA applicable to individual health insurance.[4] They exclude coverage for preexisting conditions, use medical underwriting to keep people with medical needs out, cap benefits using annual and lifetime dollar limits, and do not cover all of the benefits considered "essential" like mental health and maternity services. Even with these severe limitations, STLDI plans are specifically promoted under the Proclamation. Consequently, rather than protect the health care system and the American taxpayer from the "burdens of uncompensated care," as the Proclamation states, allowing prospective immigrants to purchase such junk plans as opposed to marketplace coverage will likely *increase* uncompensated care when immigrants need health care services not covered under these junk plans. For the District of Columbia, actuaries from Oliver Wyman estimate that individual market claims cost will increase by as much as 21.4% from the proliferation of junk plans. The Proclamation's policy puts secure quality health insurance coverage of District residents (citizens and noncitizens) at risk.

Second, the Proclamation further undermines the purchase of marketplace coverage by requiring coverage prior to entry. Specifically, while the Proclamation contemplates that unsubsidized private health insurance coverage obtained through a marketplace (like DC Health Link) would qualify as meeting health coverage requirements for entry into the U.S., it fails to recognize the practical difficulty, if not impossibility, of establishing such coverage while abroad. Under the ACA and related regulations, an individual applying for private health insurance coverage through a Marketplace must show proof of residency in a U.S. state or territory as well as lawful presence to become eligible for such coverage.[5] A person applying for entry into the U.S. by definition does not yet have lawful presence.

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[2] Centers for Medicare & Medicaid Services. 2019 Marketplace Open Enrollment Period Public Use Files. https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2019_Open_Enrollment.html

[3] U.S. Department of Homeland Security. Final Rule. "Inadmissibility on Public Charge Grounds," 84 Federal Register 41292, 41299 (Aug. 14, 2019).

[4] Comment on Short-Term, Limited-Duration Insurance- CMS-9924-P from Mila Kofman, Executive Director of D.C. Health Benefit Exchange Authority to Dept. of Health and Human Services, Centers for Medicaid and Medicare Services, April 19, 2018. https://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/DC_HBX_Comment_CMS_9924-P.PDF.

[5] U.S.C. § 18032(f); 45 C.F.R. 155.305(a).

Third, this Proclamation and the recent Department of Homeland Security Public Charge rule seem to be at odds with respect to the effect of enrolling in subsidized private health insurance coverage (private insurance with tax credits).[6] While the Proclamation states that the visa applicant must be enrolled in unsubsidized coverage, the Public Charge rule views all private coverage (including subsidized private coverage) positively in the asset/resources analysis.[7] Importantly, while we oppose the anti-immigrant policies reflected in the Proclamation and the Public Charge Rule, we expect consistency in standards used. The Proclamation adds further confusion and increases the Public Charge Rule's chilling effect.

Contradictory to the ACA

The Proclamation directly conflicts with provisions of the ACA that provide immigrants access to marketplace coverage.

Current federal law, as established by the ACA, allows lawfully present individuals, both immigrants and non-immigrants, to purchase *subsidized* health insurance coverage through health insurance exchanges.[8] In the ACA, Congress specifically exempted recent immigrants from the 100 percent federal poverty level floor on eligibility for premium tax credit subsidies because they are not eligible for Medicaid due to their recent immigration status.[9] Thus the Proclamation's requirement that immigrants acquire unsubsidized coverage is akin to amending the ACA without Congress. In other words, the Proclamation is restricting the ACA subsidized coverage provision under 26 U.S.C. §36B(c)(1)(B)("Special rule for certain individuals lawfully present in the United States") to only apply to immigrants already here. And over time as this pool of people becomes smaller, there will be zero enrollment under §36B(c)(1)(B). The Administration does not have authority to amend the ACA.

Contrary to the APA

The two-day comment period violates the APA. The President is requiring the State Department to use a new standard for issuing visas. The Proclamation requiring the new standard is therefore a rule under the APA. The APA provides the public an opportunity for review and input to agencies with respect to rules and rule changes. The two-day comment period does not meet the comment period and the Proclamation does not meet rule-making process required by the APA for policy changes.

Conclusion

We ask that the Proclamation be withdrawn in its entirety.

Sincerely,

Mila Kofman
Executive Director
DC Health Benefit Exchange Authority

[6] *Supra*, note 3.
[7] *Id.*
[8] 26 U.S.C. §18032(f)(3).
[9] 26 U.S.C. §36B(c)(1)(B)("Special rule for certain individuals lawfully present in the United States").

EXHIBIT 24

October 31, 2019

Submitted via www.regulations.gov

Department of State, Office of Information and Regulatory Affairs, Office of Management and Budget
Department of State's Bureau of Consular Affairs, Office of Visa Services
Docket Number: DOS-2019-0039

Re: Emergency Submission Comment on Presidential Proclamation No. 9945, Requiring Immigrant Health Insurance Coverage

To Whom It May Concern,

On behalf of Latino Network, Casa of Oregon, Catholic Charities Immigration Legal Services, Causa Oregon, Centro Cultural de Washington County, Centro Latino Americano, Innovation Law Lab, the Justice and Ministry Team of the United Church of Christ's Central Pacific Conference, LatinX Alliance of Lane County, Metropolitan Public Defender's Immigrant Defense Oregon, Oregon AFL-CIO, the Rural Organizing Project, Unidos Bridging Community, VIVA Inclusive Migrant Network, and Voz Workers Rights Education Project, we write to express our opposition to the Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System, (hereinafter, "the Proclamation"), which requires immigrant visa applicants to establish, to the satisfaction of a consular officer, that the applicant will be covered by an approved health insurance plan within 30 days of entry into the United States, unless the applicant possesses sufficient financial resources to cover reasonably foreseeable medical costs.

I. Organizational Signatories

Latino Network is a non-profit organization based in Portland, Oregon. Latino Network's organizational mission is to positively transform the lives of Latino youth, families, and communities. Latino Network works to educate and empower Multnomah County Latinos to achieve physical and mental health, safe housing, sustainable financial stability, and social support by offering a variety of programs and services, including early childhood services, community-based programs, school-based programs, arts and culture programs for youth, health and wellness programs, and civic leadership programs.

Casa of Oregon began 30 years ago to help local organizations provide housing for farmworkers and other marginalized populations in primarily rural areas. While focusing on those who are often unable to advocate for themselves, Casa positions itself as a liaison to the community with government, industry and community organizations. Casa works alongside community organizations to provide programs and resources that strengthen families' financial well-being.

Catholic Charities Immigration Legal Services is a nonprofit law program providing low-cost consultations and legal representation to immigrants and refugees throughout Oregon and southwest Washington. The organization also educates the public, immigrant communities, and the organizations who serve them to promote justice for all newcomers and support conditions for their full participation in American society. Legal Services provides representation to support family reunification and assistance to the most vulnerable immigrants and refugees, including survivors of domestic violence, sexual assault, and human trafficking.

Causa is Oregon's immigrant rights organization. Causa works to improve the lives of Latino immigrants and their families in Oregon through advocacy, coalition building, leadership development, and civic engagement. Latino immigrants and their families are the heart of Causa and inspire, implement, and champion the organization's work. Causa envisions a world where all people have the opportunities and resources needed to thrive; and a community that welcomes and values the contributions, strengths, and assets of Latino immigrants and their families.

Centro Cultural is Oregon's oldest Latino non-profit. Founded in 1972, Centro Cultural's legacy is built on community leadership and Latino heritage. Today, its mission promotes personal growth and empowerment for Washington County communities of color and low income families. Centro serves Washington County and the Portland Metro Area by offering Arts & Culture, Civic Leadership & Advocacy, Community Wellness, Prosperidad Economic Empowerment, and Youth Development services. At the heart of Centro Cultural's programming is a commitment to engage and activate the potential of our local families to achieve community resilience.

Centro Latino Americano is a bilingual, multicultural agency that serves Latino families in Lane County, Oregon. Centro Latino Americano was formed in 1972 by a group of activist Chicano students from Lane Community College and the University of Oregon to meet the needs of Mexican immigrant families in Lane County. The organization has continued to serve as the main avenue for the social and civic integration of the Latino population in Lane County. Centro Latino Americano empowers Latino families by providing opportunity and building bridges for a stronger community. Its vision is a thriving, connected community where all people are valued.

Innovation Law Lab is a nonprofit organization dedicated to upholding the rights of immigrants and refugees. Founded in 2014, in response to the mass detention and deportation of asylum-seeking immigrant families, Innovation Law Lab specializes in the creation of scalable, highly replicable, and connected sites of resistance that create paradigm shifts in immigration representation, litigation, and advocacy. By bringing technology to the fight for immigrant justice, Innovation Law Lab empowers advocates to scale their impact and provide effective representation to immigrants in detention and in hostile immigration courts across the country.

The Justice and Witness Ministry Team is a part of the Central Pacific Conference of the United Church of Christ. The team provides the focus and support for the Conference and local churches to actively participate in ministries of compassion, advocacy and reconciliation, including with our immigrant community members, and supports the Conference's goals of experiencing and sharing the varied gifts of God's love, celebrating and enhancing congregational vision and vitality, and demonstrating and promoting peace and justice.

The Latinx Alliance of Lane County is a coalition of community organizations and members, organized to coordinate efforts and better support Latinos in the Lane County area in the face of federal attacks against Latino immigrants.

Metropolitan Public Defender (MPD) has been on the cutting edge of public defense since its inception in 1971, with the goal of providing quality legal representation for people living in poverty. MPD is a 501(c)(3) non-profit law firm that provides public defense, including criminal cases from misdemeanors to capital murder, juvenile cases from delinquency to dependency, mental health cases from civil commitments to mental health courts, and specialty projects from drug courts to community court. Its Community Law Division hosts, among other projects, Immigrant Defense Oregon, which is made up of a team of immigration attorneys who defend Oregonians who have been targeted for deportation, educate our communities on deportation proceedings and ongoing changes in immigration enforcement, ensure that our immigrant neighbors understand their rights and due process protections within the U.S. immigration system, and provide advice to MPD's public defenders regarding the potential immigration consequences of a criminal conviction. MPD is committed to the shared vision of standing in solidarity and support with our immigrant communities.

The Oregon American Federation of Labor- Congress of Industrial Organizations (AFL-CIO) primarily focuses on building power for working people. Oregon AFL-CIO accomplishes this in every facet of its Federation's work, especially in its four pillar programs which are devoted to organizing new workers; electing leaders and advocating for legislation which supports working people; and engaging with communities in Oregon and with organizations outside of the labor movement.

The Rural Organizing Project (ROP) is a statewide organization of locally-based groups that work to create communities accountable to a standard of human dignity: the belief in the equal worth of all people, the need for equal access to justice and the right to self-determination. Starting in 1992, ROP's challenges to the anti-democratic right have earned ROP a national reputation for being an effective grassroots organization that takes on the hard issues. Today, ROP works with over 65 member groups to organize on issues that impact human dignity and to advance inclusive democracy. ROP's mission is to strengthen the skills, resources, and vision of primary leadership in local autonomous human dignity groups with a goal of keeping such groups a vibrant source for a just democracy.

UNIDOS Bridging Community is a diverse and welcoming nonprofit organization that advocates for Latino immigrant families and builds bridges of support and understanding among Latino and non-Latino communities in rural Yamhill County, Oregon. With many dedicated volunteers and a small and energetic staff, UNIDOS achieves its goals through education, leadership development, active collaboration, and relationships built on the respect of each other's story.

VIVA Inclusive Migrant Network is a nonprofit organization that supports Oregon migrant communities. VIVA defends migrant communities by helping them identify useful tools about their rights and ending family separation. VIVA believes that the criminalization of immigration is immoral because migration is a human right. By uniting forces and working together, VIVA seeks to make a difference for humanity. Voz Workers' Rights Education Project is the only organization in the state of Oregon working with the day laborer community. Day laborers are temporary workers, many of them immigrants, many of them homeless, many of them facing multiple barriers to long-term employment.

Voz builds leadership and economic power in this community through economic empowerment, leadership development, and grassroots organizing. Voz has almost 20 years of experience organizing day laborers in Portland and is a founding member of the National Day Laborer Organizing Network. Voz believes that sustainable and transformative social justice work must be led by the communities most affected. Voz models this philosophy by striving to be a fully worker-led organization, and by empowering Portland day laborers not just through economic opportunities, but through opportunities to become leaders in their community.

Latino Network and the other signatory organizations are all members of Oregon Ready. Oregon Ready is a coalition of immigrant rights groups from throughout the state who came together to create a stronger immigrant rights infrastructure; meshing community-based organizing, immigrant defense work, immigrant rights policy development, and public discourse. Together, these organizations strongly oppose the Proclamation and the immediate and devastating effect it will have on immigrant Oregonians.

II. The Proclamation is Unlawful

Latino Network, along with several individual plaintiffs, has recently filed a lawsuit against the Proclamation. *John Doe #1 v. Donald Trump,* No. 3:19-cv-01743-SB (D. Or.) (filed Oct. 30, 2019). For the reasons outlined in the complaint, and described in this comment, the Proclamation is unlawful and should not be implemented.

First, the Proclamation will immediately cause family separation by preventing reunification of immigrant families in Oregon, and also limit Oregon's immigrant diversity by blocking immigrants coming on other types of visas from the United States. In fact, the Proclamation applies to a significant majority of immigrants seeking to enter the United States on an immigrant visa, with very limited exceptions. Researchers estimate that close to **two-thirds** of future immigrants otherwise entitled to admission would be kept out of the country under the Proclamation.[1] Many Oregonians who have already endured years-long waits, and expensive and complex legal processes, in order to bring close relatives to the United States will be forced into prolonged, and perhaps permanent, separation under the Proclamation's rule. The Proclamation will have an especially devastating effect on low-income immigrants, who will struggle to find an affordable and qualifying healthcare plan on such short notice.

Second, even for those immigrants who can afford a healthcare plan, the requirements for obtaining a qualifying plan are vague and nearly impossible to decipher. For example, a "catastrophic" health care plan will supposedly qualify- but this term can be used to refer both to high-deductible plans generally, and to certain Affordable Care Act (ACA)-defined plans specifically. The Proclamation provides no further guidance as to which specific plans will satisfy its requirements. There is also a troubling lack of guidance on how consular officers are to interpret the Proclamation's suspension of entry of those who do not have the financial resources to pay for reasonably foreseeable medical costs." We especially fear that this standard could be manipulated to discriminate against older and disabled intending immigrants.

Moreover, the narrow range of plans available to satisfy the Proclamation's requirements are largely unavailable to the vast majority of intending immigrants, especially within the first 30 days of their arrival to the United States. Medicare, for example, is only available to persons over 65 years of age who have resided in the United States for at least five years, making it entirely inaccessible to intending immigrants. Other qualifying plans are available only to specific and narrow groups, like members of the military and their immediate family members, or the plans of family members, which are only available to spouses or to children under the age

[1] Nicole Narea, *Trump just quietly cut legal immigration by up to 65%,* VOX, https://www.vox.com/2019/10/9/20903541/trump-proclamation-legal-immigration-health-insurance (last visited Oct. 30, 2019).

of 27. Similarly, employer plans are only available to intending immigrants who have already secured employment, and even in that case, many employers impose a waiting period of more than 30 days post-hire before benefits are actually extended.[2] That leaves, in large part, only short-term limited duration insurance plans as an option. But many of these plans require U.S. citizenship or lawful permanent residence as a coverage requirement; and in almost *half* of U.S. states, these plans do not extend to the 364-day duration required by the Proclamation.[3] Indeed, Oregon law limits the duration of such plans to only *three months*, including renewals.[4]

III. The Office of Management and Budget Should Not Grant Emergency Clearance for this Information Collection Request (ICR)

Finally, we strenuously object to the extremely short, and unlawful, 48-hour period provided comments. Under the Paperwork Reduction Act (PRA), Information Collection Requests (ICRs) such as this one must undergo a 60- and 30-day notice for public comment.[5] Emergency approvals are "discouraged" and "granted only rarely,"[6] and must meet narrow legal criteria that are not met here. According to the PRA Guide:

> An agency may request emergency clearance only when it needs to begin collecting the information more quickly than the time a full clearance will require. In every case, the agency must show that: (1) The collection of information must be needed prior to the expiration of the normal time periods; and (2) The collection of information is essential to the mission of the agency. In addition to those two criteria, the agency must, in every case, demonstrate that one of the following four circumstances is present: (1) Public harm is likely if normal procedures are followed; or (2) An unanticipated event has occurred; or (3) The use of normal procedures is likely to prevent or disrupt the collection; or (4) The use of normal procedures is likely to cause a statutory or court ordered deadline to be missed.[7]

Neither of the two preliminary requirements, nor any one of the four circumstances, are present in this case. The Proclamation imposes monumental changes on our nation's immigration laws and will cause serious harm to immigrant communities throughout the United

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[2] *See* 2018 Employer Health Benefits Survey, KAISER FAMILY FUND, (Oct. 3, 2018), https://www.kff.org/report-section/2018-employer-health-benefits-survey-section-3-employeecoverage-eligibility-and-participation/.
[3] *Is Short-term Health Insurance Right for You?,* HEALTHINSURANCE.ORG, https://www.healthinsurance.org/short-term-health-insurance/; Short Term Health Insurance Eligibility Information for Short Term Health Insurance, or STM, ELIGIBILITY.COM (Updated Jan. 28, 2019), https://eligibility.com/short-term-healthinsurance.
[4] Or. Rev. Stat. § 743B.005(16)(b)(H).
[5] U.S. Office of Personnel Management, Paperwork Reduction Act (PRA) Guide, Version 2.0 (April 2011) at p. 9.
[6] *Id.*
[7] *Id.*

States. There is no reasonable justification for such a shortened comment period, and the time allotted does not provide a meaningful opportunity for the Office of Management and Budget to review public input. Moreover, as described above, the Proclamation that the ICR seeks to implement is unlawful, making the proposed information collection "[un]necessary for the proper functions of the [State] Department" and therefore inappropriate.[8] The emergency request should be denied.

IV. Conclusion

For the above stated reasons, Latino Network, Casa of Oregon, Catholic Charities Immigration Legal Services, Causa Oregon, Centro Cultural de Washington County, Centro Latino Americano, Innovation Law Lab, the Justice and Ministry Team of the United Church of Christ's Central Pacific Conference, LatinX Alliance of Lane County, Metropolitan Public Defender's Immigrant Defense Oregon, Oregon AFL-CIO, the Rural Organizing Project, Unidos Bridging Community, VIVA Inclusive Migrant Network, and Voz Workers Rights Education Project strongly oppose the Proclamation and its changes to our immigration system. All of this shows the true intent behind the Proclamation: to limit lawful immigration to the United States, and, in particular, to close the door even more forcefully on intending immigrants of color. Our nation's immigrant visa system is governed by statute, and prioritizes immigration for the purposes of family unity, business, humanitarian reasons, and diversity. These priorities, which have been enshrined in the Immigration and Nationality Act since 1952, should not be eviscerated by an ill-considered and facially nonsensical Presidential Proclamation. If allowed to remain in place, the Proclamation will effectively eviscerate long-standing and Congressionally established avenues to lawful status in the United States. After waiting years to reunite with family members in the United States, many vulnerable and low-income immigrants will face indefinite family separation because of this cruel and illogical policy.

The Proclamation's intended effect on the immigrant community is not unanticipated. Indeed, Latino Network and other signatory Oregon Ready members have spent significant time over the past year developing educational materials, conducting outreach, and answering community questions regarding the recently blocked public charge rule, which shares many of the same problems, and xenophobic goals, as the Proclamation. While we will continue advocacy in our local communities, we raise our voices to strenuously object to the Proclamation and its impending implementation. The integrity of our immigration system should not be undermined in this significant way.

Thank you for the opportunity to submit these comments. Please do not hesitate to contact any of the organizational representatives listed below should you have any questions about our comments or require further information.

[8] 84 Fed. Reg. 58199.

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Executive Director
LATINO NETWORK

Peter Hainley
Executive Director
CASA OF OREGON

John Herrera
Director
CATHOLIC CHARITIES IMMIGRATION LEGAL SERVICES

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UNIDOS BRIDGING COMMUNITY `

Francisco Aguirre
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VIVA INCLUSIVE MIGRANT NETWORK

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EXHIBIT 25

THE LEGAL AID SOCIETY
CIVIL

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October 31, 2019

Submitted via www.regulations.gov

United States Department of State
Office of Information and Regulatory Affairs
Office of Management and Budget
Department of State's Bureau of Consular Affairs, Office of Visa Services

Re: *Docket ID No. DOS-2019-0039, Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage; Form DS-5541*

To Whom it May Concern:

The Legal Aid Society hereby responds to the request for comments on the Notice of Information Collection Under Office of Management and Budget Emergency Review for the Immigrant Health Insurance Coverage ("Information Collection Request") published in the Federal Register on October 30, 2109, 84 Fed Reg. 58,199 (Oct. 30, 2019), concerning The Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the U.S. Healthcare System (the "Proclamation"), 84 Fed. Reg. 53,991 (Oct. 4, 2019), due to go into effect on November 3, 2019. The Proclamation represents yet another illegal attempt by this Administration to close the door on family reunification, which has long been the cornerstone of our immigration policy. It forces immigrants into an impossible choice between purchasing unaffordable, possibly low-quality health coverage, or missing out on an opportunity to come to this country to be with their families and contribute to our communities. Accordingly, The Legal Aid Society calls on the Office of Management and Budget (OMB) not to grant emergency clearance for this Information Collection Request and to further reject the Proclamation and disapprove its implementation. The Department of State (DOS) does not meet the requirements for an emergency clearance, and the Proclamation should not go into effect because it would fundamentally change our nation's immigration law and is based on a fundamental misunderstanding of our health insurance system.

I. Background.

The Legal Aid Society was founded in 1876 to defend the individual rights of German immigrants who could not afford a lawyer as they pursued a better life in New York City. Today we stand as the nation's oldest and largest not-for-profit legal services organization. Through three major practice areas—Civil, Criminal, and Juvenile Rights—the Society's 2,000 attorneys, paralegal case handlers, support staff and volunteers coordinated by our *Pro Bono* program handle approximately 300,000 cases a year in city, state, and federal courts through a network of borough,

neighborhood, and courthouse-based offices in 27 locations in New York City. We provide comprehensive legal services to fulfill our mission that no New Yorker should be denied access to justice because of poverty.

Immigrants, rich and poor, constitute vast swaths of the U.S. population and make vital contributions to our country generally and to New York City especially. The positive contributions of immigrants are felt in every corner of our communities, in myriad ways. Immigrants help fuel the strength and growth of our economy. Immigrants occupy numerous positions within our government. They work in the city's medical facilities. They are teachers and university students and corporate employees. In addition, they are consumers, and their presence keeps our city's industries thriving.

Though Legal Aid has broadened its practice over time, we have remained committed to our original mission: helping low-income immigrant communities. Our Immigration Law Unit utilizes the expertise of more than 60 attorneys, paralegals, and social workers to serve low-income immigrant New Yorkers seeking legal assistance before the U.S. Citizenship and Immigration Services (USCIS) and in immigration and federal courts. We represent people threatened with removal, some of whom are in detention, file habeas petitions seeking the release of people unlawfully detained, represent unaccompanied minors fleeing violence in Central America, assist numerous Deferred Action for Childhood Arrivals and Temporary Protected Status recipients with renewing their status and seek a wide range of immigration relief, including naturalization, adjustment of status, Violence Against Women Act self-petitions, U visas, T visas, asylum, Special Immigration Juvenile Status, removal of conditions and family petitions. We also seek relief in court when there is no other way to protect our clients. *See, e.g., Make the Road NY et al. v. Cuccinelli*, 19-cv-7993 (S.D.N.Y. filed Aug. 27, 2019).

Our Health Law Unit provides advice and representation to low-income New Yorkers, including to immigrant New Yorkers who face barriers accessing health insurance and health care services to which they are entitled by law. We advocate for access to health care for all New Yorkers through individual representation as well as policy and legislative advocacy, and have been instrumental in establishing access to health care for non-citizens in New York. *See, e.g., Aliessa v. Novello,* 754 N.E.2d 1085 (2001).

Immigrants are not only served by our Immigration Law Unit and our Health Law Unit. We serve low-income immigrants in every area of our practice – whether preventing the loss of an apartment in housing court, obtaining disability and other government benefits, addressing wage and hour law violations, providing tax advice or handling divorce and custody matters.

II. The Legal Aid Society calls on the Office of Management and Budget not to grant the DOS request for emergency clearance for the Information Collection Request and to reject the Proclamation and disapprove its implementation.

A. OMB Should Not Grant Emergency Clearance for the Information Collection Request

This Comment focuses on the impact the Proclamation would have on immigration and health care, but as a threshold matter, we urge OMB to deny emergency clearance for the Information Collection Request for the following reasons.

First, the public has been given less than 48 hours to respond to the Information Collection Request. This is insufficient time for the public, including many key stakeholders, to provide meaningful feedback, and this is reason alone to deny the request for emergency clearance. *Second*, the DOS fails to meet the criteria for emergency clearance under the Paperwork Reduction Act.[1] The November 3, 2019 deadline for implementation of the Proclamation is arbitrary and not justified where the Proclamation is fundamentally flawed and illegal, for some of the reasons described below. Nor is there any cognizable emergency that the Proclamation is necessary to address. In contrast, the Proclamation will *create* emergencies for many immigrant families, as described below. *Finally*, the Information Collection Request fails to offer any meaningful guidance regarding how an applicant for an immigrant visa would establish that he or she will not impose a burden on the U.S. healthcare system as required under the Proclamation.

B. The Health Proclamation Should Never Be Implemented

The health Proclamation is fundamentally flawed, and should be withdrawn immediately for the following reasons as discussed below: (1) the Proclamation would fundamentally change U.S. immigration law by causing approximately 375,000 immigrants, or close to two-thirds of non-citizens being denied entry and admission to the U.S.;[2] (2) the Proclamation would undermine U.S. policy to promote access to quality health care; and (3) the Proclamation will result in barring Legal Aid's low-income immigrant clients, especially immigrants of color, from the U.S. in a discriminatory way, and undermine New York State's successful efforts to promote access to affordable health care.

1. The Proclamation Would Fundamentally Change U.S. Immigration Law by Causing Approximately 375,000 Non-Citizens to be Denied Entry and Admission

[1] *See* "A guide to the Paperwork Reduction Act," Office of Information and Regulatory Affairs (OIRA), OMB at https://pra.digital.gov.
[2] Nicole Narea and Alex Ward, *Trump quietly cut legal immigration by up to 65%*, VOX, Oct. 30, 2019, https://www.vox.com/2019/10/9/20903541/trump-proclamation-legal-immigration-health-insurance.

to the U.S.

The Proclamation would deny entry into the U.S. to people seeking family-based immigrant visas and some others if they cannot establish that they will be covered by specific insurance products within 30 days after entry or if they cannot show they are healthy and/or wealthy enough to pay out-of-pocket for "reasonably foreseeable medical expenses."

The Proclamation would apply to people seeking immigrant visas abroad, including: spouses of U.S. citizens and lawful permanent residents (LPRs); children of LPRs who are 18-21 years old; children under 18 if travelling with a parent who is also immigrating; adult sons and daughters of U.S. citizens and LPRs; people with diversity visas or employment-based immigrant visas; and some religious workers. The Proclamation would also apply to parents of U.S. citizens who cannot show that their health care will not impose a substantial burden on the U.S. health care system. If enacted, the Proclamation is estimated to reduce legal immigration to the U.S. by nearly two-thirds (375,000 people), and affect nearly all diversity and family-based immigrants.[3]

These 375,000 people are noncitizens who otherwise would have been legally permitted under the Immigration and Nationality Act (INA), a law duly passed by Congress, to immigrate to the United States. In issuing this Proclamation, the President and the Administration contravene Congress and seek to undermine the U.S. immigration system.

2. The Proclamation Would Undermine U.S. Policy to Promote Access to Quality Health Care.

The stated purpose of the health Proclamation is to ensure that providers are paid and that people pay less in taxes and premiums to cover medical expenses for those "who lack health insurance or the ability to pay for their healthcare,"[4] yet the Proclamation would undermine rather than further its stated purpose. There are three major areas of concern discussed below: (1) by deeming subsidized, comprehensive Affordable Care Act (ACA) plans unacceptable, the Proclamation would make access to comprehensive health insurance impossible for all but a narrow group of intending immigrants; (2) the Proclamation's approval of non-ACA-compliant short-term health plans (a/k/a "junk plans"), would increase uncompensated care costs and would limit access to care, making individuals and communities sicker; and (3) the Proclamation will further add to the "chilling effect" caused by other Trump Administration policies such as the Public Charge rule,

[3] *See* Narea and Ward, *supra* note 2.
[4] Donald J. Trump, Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System (issued Oct. 4, 2019), https://www.whitehouse.gov/presidential-actions/presidential-proclamation-suspension-entry-immigrants-will-financially-burden-united-states-healthcare-system/ (last visited Oct. 31, 2019).

creating fear in immigrant communities that prevents immigrants from accessing health insurance coverage and health services to which they are legally entitled.

a. By deeming subsidized, comprehensive ACA plans unacceptable, the Proclamation would make access to comprehensive health insurance impossible for all but a narrow group of intending immigrants.

By deeming subsidized, comprehensive ACA plans unacceptable, the Proclamation would make access to comprehensive health insurance impossible for all but a narrow group of intending immigrants. For those immigrants who do not qualify for Medicare or TRICARE, or for those whose employers do not provide insurance or who cannot enroll in a family member's plan, they will have to choose between a prohibitively costly, unsubsidized comprehensive health insurance plan or a short-term, "junk" plan.

Comprehensive health insurance – that is, health insurance that actually protects consumers' as well as providers' interests – is, if unsubsidized, prohibitively expensive in New York State. For instance, in 2019, the average monthly premium for a Silver plan for a 40-year-old nonsmoker seeking insurance only for herself hovers between $581-627.[5] If she seeks coverage for herself, her husband and her two minor children, the monthly cost of an unsubsidized Silver plan increases to somewhere between $1656-1789.[6] Immigrants seeking to come to this country in search of a better life may work low-wage and often undesirable jobs that do not offer health insurance. Paying out-of-pocket for unsubsidized, comprehensive health insurance is entirely out of the question.

Through the ACA, Congress elected to make health insurance and corresponding subsidies available to lawfully residing immigrants. Not only does this Proclamation undermine Congress, but it undermines its own stated goals: when people cannot afford comprehensive health insurance, uncompensated care goes up and individuals and their communities become less healthy. The Proclamation also disregards the fact that subsidized insurance is available to those earning up to 400% of the Federal Poverty Limit, or more than $103,000 for a family of four. The fact that the minimally subsidized insurance available to families with six figures of income is unacceptable under the Proclamation clearly shows that it is intended to limit admission to this country to only the wealthiest immigrants.

b. The Proclamation Would Result in the Use of Junk Plans in Contravention of the ACA.

By approving non-ACA-compliant short-term health plans (a/k/a "junk plans"), the

[5] *See* New York State of Health, Compare Plans and Estimate Cost, https://nystateofhealth.ny.gov/individual/searchAnonymousPlan/search (last visited Oct. 31, 2019).
[6] *See id.* https://www.kff.org/interactive/subsidy-calculator/

Proclamation would increase uncompensated care costs and would limit access to care, making individuals and communities sicker.

Immigrants seeking to come to New York, home to approximately 2.02 million noncitizens,[7] do not have the option of purchasing a short-term/junk plan. New York prohibits the sale of junk plans in the state[8] precisely to protect New Yorkers' physical and financial health. Junk plans are insufficient in the face of a serious medical condition or emergency: for instance, they do not have to cover preventive services, maternity care, and prescription drugs, and impose dollar limits on coverage. In other words, these short-term/junk plans do not cover essential health benefits. Moreover, because these junk plans do not comply with insurance renewability requirements under New York law, by barring the sale of junk plans, New York has limited uncompensated care costs for hospitals and providers and protected its residents. At least one rationale claimed for the Proclamation is the need to prevent use of emergency rooms for non-emergency conditions and to prevent uncompensated care. Allowing short-term/junk plans but not subsidized, comprehensive, ACA-compliant coverage only increases the likelihood of emergency room use for non-emergency conditions and the prospect of uncompensated care, putting further strain on the health providers and taxpayers the Proclamation purports to protect.

c. The Proclamation will exacerbate the "chilling effect" preventing immigrants from accessing health insurance and health care services, harming community health and the economy.

Trump Administration policies targeting immigrants, including the currently enjoined Public Charge rule, have already created a significant chilling effect that has prevented immigrants from accessing health insurance coverage to which they are entitled, and even caused some to forgo essential health treatments because of fear of negative immigration consequences. The Proclamation will add to the environment of fear around accessing health coverage and other public benefits. Immigrants who forgo needed health treatments may suffer from preventable illnesses, adding to the long-term costs on the health care system.

3. The Proclamation Will Result in Barring Legal Aid's Low-income Immigrant Clients, Especially Immigrants of Color, from the U.S. in a Discriminatory Way and Undermine New York State's Successful Efforts to Promote Access to Affordable Health Care.

[7] Migration Policy Institute (MPI), State Immigration Data Profiles: New York (2016), available at: https://www.migrationpolicy.org/data/state-profiles/state/demographics/NY (deriving tabulations of data from the U.S. Census Bureau's American Community Survey (ACS) and Decennial Census).
[8] Letter from Lisette Johnson, Bureau Chief, Health Bureau, New York State Department of Financial Services to All Insurers Authorized to Write Accident and Health Insurance in New York State, Article 43 Corporations, and Health Maintenance Organizations, Re: Prohibition on Short-Term Limited Duration Plans (June 21, 2018), available at: https://www.dfs.ny.gov/insurance/circltr/2018/cl2018_07.htm.

The Administration not only does a poor job disguising its goal to impose a wealth test on people – who are primarily people of color – seeking to come to this country, but it puts the nation's health at risk and in so doing wastes the nation's dollars in ineffective and hurtful ways.

The Presidential Proclamation would serve to effectively bar almost all of our family-based intending immigrant clients, who are all low-income (by definition, being clients of The Legal Aid Society). Purchasing at least 364 days of approved health insurance would be impossibly expensive for most of them, if not all. Very few clients would satisfy the alternate prong of having the financial resources to pay for their reasonably foreseeable medical costs. The Proclamation is one more attempt by this Administration to radically transform immigration by closing the door on family reunification, which has long been the cornerstone of our immigration policy.

For all the foregoing reasons, The Legal Aid Society calls on the Office of Management and Budget to refrain from granting emergency clearance for the Information Collection Request and to further reject the Proclamation and disapprove its implementation.

Sincerely,

Rebecca Antar Novick, Director, Health Law Unit
Lillian Ringel, Staff Attorney, Health Law Unit
Susan E. Welber, Staff Attorney, Law Reform Unit
Civil Practice
The Legal Aid Society
199 Water Street
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EXHIBIT 26

The Commonwealth of Massachusetts
Commonwealth Health Insurance Connector Authority
100 City Hall Plaza
Boston, MA 02108

CHARLES D. BAKER
Governor

KARYN POLITO
Lieutenant Governor

MARYLOU SUDDERS
Board Chair

LOUIS GUTIERREZ
Executive Director

October 31, 2019

Edward J. Ramotowski
Deputy Assistant Secretary
Office of Visa Services
Bureau of Consular Affairs
U.S. Department of State
600 19th Street, NW
Washington, DC 20036

Department of State Desk Officer
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage (Published in Federal Register Volume 84, Number 210, page 58199 on October 30, 2019)

Dear Mr. Ramotowski:

The Massachusetts Health Connector respectfully avails itself of the opportunity provided by the U.S. Department of State to comment on the "**Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage.**"

The Massachusetts Health Connector ("Health Connector") is a state-based Marketplace ("SBM") authorized under state law and the Affordable Care Act (ACA). The Health Connector is designed to connect Massachusetts residents with high quality, affordable health coverage and to promote universal health coverage in the Commonwealth. Today, the Health Connector serves over a quarter-million Massachusetts residents, including approximately 290,000 individuals as well as over 7,000 small business employees. The Health Connector's efforts have contributed to the Commonwealth's status as one of the healthiest states in the nation,[1] with a

[1] *See* www.mass.gov/news/massachusetts-named-healthiest-state-in-the-nation.

nation-leading health insurance rate of over 97 percent,[2] and the lowest-cost average Marketplace premiums in the country for the past three consecutive years.[3]

In 2006, Massachusetts enacted a landmark package of health care reforms, including state subsidy programs for low- and moderate-income individuals, including for lawfully present immigrants, as well as a state-level individual mandate to have health insurance, which is also applicable to lawfully present immigrants.

The Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System ("PP 9945") will introduce significant risks to the Commonwealth's hard-won progress over the past 13 years to ensure all lawful residents have access to affordable health care and prevent the Commonwealth from maintaining its steady and high insurance rate and limits access to health coverage supports our Commonwealth has worked to make available for immigrants. As such, **we strongly object to the Proclamation in principle and for the infeasibility and lack of care contemplated in its implementation. Further, we strongly object to the clearly inadequate public comment period being made available, particularly in light of the significant implications of this proposal**. Specifically:

1. As a practical matter, PP 9945 effectively precludes visa-seeking immigrants from gaining access to health insurance coverage through Marketplaces, in contravention of the Affordable Care Act and the stated purpose of the Proclamation.

The Proclamation and Notice of Information Collection suggest insufficient thought has gone into contemplating the practical details of how such a policy would be carried out for affected individuals, and it shows little understanding of procedural norms or requirements in the health benefits arena. For example, while the Proclamation contemplates that unsubsidized commercial coverage obtained through a Marketplace (like the Health Connector) would qualify as adequate coverage, it fails to recognize the practical difficulty, if not impossibility, of establishing proof of such coverage while abroad. Under federal law and regulation associated with the Affordable Care Act, an individual applying for commercial unsubsidized coverage through a Marketplace must show proof of residency in that state as well as lawful presence, which contradicts the Proclamation's supposition that the individual could have already obtained such coverage or be able to prove that it is forthcoming.

PP 9945 creates a Catch-22: Under existing federal law, immigrants cannot access insurance through Marketplaces without verifying residency and lawful presence through a strict eligibility process this federal Administration has championed. Yet under PP 9945, those seeking to establish residency and lawful presence through proper immigration channels cannot do so without verifying insurance status. As a result, individuals who otherwise could become lawfully present immigrants and qualify for health insurance under federal law will be barred from both aims. This paradox is contrary to federal law and illogical in its practical result.

2. PP 9945 shows disregard for the economic and health benefits of ensuring health insurance coverage for all immigrant residents, including the working poor who are still in progress on the path to economic security.

The Commonwealth has maintained a requirement for over a decade that all adults have access to health insurance if affordable. This approach to promoting widespread coverage was developed with careful consideration and coordination with subsidy supports and public coverage to ensure that lower-income residents can access coverage that is affordable and comprehensive. In Massachusetts, we have a longstanding array of public coverage programs, like the Health Connector's ConnectorCare program which lowers the premiums and cost sharing for eligible individuals and families that are at or below 300 percent of the federal poverty level (FPL). These affordability supports are available to lawfully present immigrants, at the direction of the United States Congress when it passed the Affordable Care Act, and at the direction of Massachusetts

[2] U.S. Census Bureau, at www2.census.gov/programs-surveys/demo/tables/p60/264/table6.pdf.
[3] Analysis of CMS Public Use Files, at www.cms.gov/CCIIO/Resources/Data-Resources/marketplace-puf.html.

state law. This Proclamation risks undermining those legal rights by introducing countervailing requirements blocking access to such coverage. To do so undermines the health and economic security of those immigrants, and their communities and the state economy. Massachusetts's experience demonstrates that providing affordable coverage opportunities along with requiring coverage is an effective way to reduce uncompensated care costs. The Proclamation fails to acknowledge the criticality of affordable options to increasing insurance coverage rates.

3. Because immigrants will not be able to seek health insurance through Marketplaces, PP 9945 undermines the health of Massachusetts's insurance market, potentially affecting coverage for immigrants and non-immigrants alike.

Beyond the immediate harms to lawfully present immigrants being barred from accessing insurance through Marketplaces like the Health Connector, the Proclamation undermines our commercial insurance market by seeking to excise lawfully present immigrants from the coverage to which they are legally entitled. Lawfully present immigrants in Massachusetts are more likely to represent "favorable" insurance risk, because they are often younger, healthier, or lower-than-average utilizers of health care services when compared to the general insured population. Several studies have concluded that immigrants are net contributors to both private coverage and Medicare, paying more in insurance premiums than they receive in benefits.[4] Similarly, the Health Connector's own data demonstrates that its immigrant enrollees, on average, have 25% lower medical claims than its citizen members, a variance attributable both to the lower age of immigrant enrollees as well as lower utilization of medical services.[5] As a result, declines in take-up or retention of immigrant coverage related to the proposed rules could have an impact on the overall risk pool—in turn leading to commercial market premium increases for citizens and immigrants alike. Increased premiums will lead to higher rates of uninsurance among all Americans, increasing the uncompensated care burden the Proclamation purports to address.

By attempting to discourage immigrants from enrolling in coverage to which they are legally entitled, the federal Administration is likely to increase commercial market premiums in Massachusetts, hurting individuals as well as small businesses because of our unique "merged market" structure. In Massachusetts, individuals and small businesses share a risk pool, insurance products, and premiums. As a result, changes to the Health Connector's individual enrollment can extend to a broader pool that includes Massachusetts's small business community, potentially increasing premiums across the board.

Of further concern, the proclamation seeks to permit Short-Term Limited Duration Plan (STLDP) coverage, which do not comply with the Affordable Care Act's consumer protections, nor those codified in Massachusetts General Laws, to qualify as "acceptable" coverage. Such plans have been widely demonstrated to lack critical comprehensive coverage[6] and can be prohibitively expensive for individuals with pre-existing conditions. Further, such plans do not satisfy Massachusetts's own individual mandate requirements or meet state-based legal requirements governing the sale of insurance coverage to individuals in the Commonwealth of Massachusetts. Diverting qualified legal immigrants from meaningful, comprehensive coverage to which they are legally entitled and instead directing them towards companies that engage in medical underwriting, spend

[4] Zallman, L., Woolhandler, S., Touw, S., Himmelstein, D.U., and Finnegan K.E. (2018). Immigrants pay more in private insurance premiums than they receive in benefits. Health Affairs 2018 37:10, 1663-1668.
[5] Health Connector analysis of claims data.
[6] A Kaiser Family Foundation analysis of STLDI sold in 2018 shows that 43% did not cover mental health services, 62% did not cover services for substance abuse treatment, and 71% did not cover outpatient prescription drugs. No plans covered maternity care, and, in seven states, STLDI covered none of these four benefit categories. These policies had out-of-pocket maximums as high as $30,000 and lifetime limits on care ranging from $250,000 to $2 million. A separate study from Georgetown University found that the best-selling STLDI policies in five states had out-of-pocket maximums from $7,000 to $20,000 for only three months (compared to the maximum of $7,150 for 12 months for an ACA-compliant plan that year). See: Karen Pollitz et al., *Understanding Short-Term Limited Duration Health Insurance*, Kaiser Family Foundation (Apr. 2018). Even when these benefits are covered by STLDI, they are subject to a number of limitations and exclusions, such as dollar limits on care; and Dania Palanker et al., *New Executive Order: Expanding Access to Short-Term Health Plans is Bad for Consumers and the Individual Market*, The Commonwealth Fund (Oct. 2017).

the majority of premium revenue on non-medical expenses[7], and are known to exclude core benefits like maternity, mental health, and substance use disorder treatment threatens both individuals' health and financial well-being. Further, it encourages insurers to profit off of immigrants seeking a new life in the United States, and sets affected immigrants up for failure to meet Massachusetts's individual mandate requirements, interfering with our long-standing stewardship of health coverage options for our residents, including lawfully present immigrants.

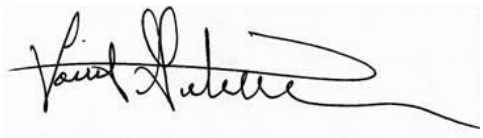
In addition to these specific concerns with the implementation and policy shortcomings of the subject Proclamation, we wish to voice our fundamental opposition to a policy that is designed to exclude lower-income immigrants from entering the United States and accessing meaningful health coverage. This policy is counter to the mission of the Health Connector, which is to ensure that all Massachusetts residents have access to affordable, comprehensive health coverage to ensure their ability to live safe, productive, and fulfilling lives in our Commonwealth and in our nation.

Finally, we strongly object to the two-day comment period afforded to the public on this proposal, which will profoundly affect our immigration and health care systems. Two days is wholly inadequate to allow for the sufficient public consideration that a policy of this significance merits, and this policy in no way constitutes an emergency.

We therefore urge you to withdraw and reconsider this policy, and we request that reasonable time be provided for public analysis and comment on any subsequent related proposal.

We thank you for consideration of our comments.

Sincerely,



Louis Gutierrez
Executive Director

[7] Data from the National Association of Insurance Commissioners (NAIC) shows that STLDI insurers had an average loss ratio of 64.6% in 2017 (compared to 80% for ACA-compliant individual market policies). The three largest insurers offering STLDI had even lower loss ratios of 43.7%, 34.0%, and 52.1%. In other words, the majority of STLDI premium revenue for those insurers went to profit, marketing, and other expenses unrelated to medical care. See: National Association of Insurance Commissioners, *2017 Accident and Health Policy Experience Report*, at 83 (2018).

EXHIBIT 27

MNsure
Where you choose health coverage

October 31, 2019

Edward J. Ramtowski
Deputy Assistant Secretary, Visa Services
U.S. State Department
Bureau of Consular Affairs
600 19th Street, NW
Washington, DC 20036

Department of State Desk Officer
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Via www.regulations.gov

Title of Information Collection: **Immigrant Health Insurance Coverage**
Docket Number**: DOS-2019-0039**
Form Number: **DS-5541**

Dear Mr. Ramotowski:

We write to provide comment on the State Department's "Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage."

We understand Presidential Proclamation 9945 allows consular officers to investigate whether an applicant for an immigrant visa would be considered a "burden" if they are not covered by approved health insurance within 30 days of their arrival unless they have the financial resources available to pay for reasonably foreseeable medical costs.

We are concerned about how this new requirement would impact individuals using Minnesota's marketplace. Specifically, MNsure is concerned that this Proclamation encourages underinsurance among newly arrived immigrants, promotes an atmosphere of consumer fear and confusion, and discourages individuals from seeking the insurance coverage and health care they need.

As a state-based health insurance exchange, MNsure acts as the streamlined, single front door for Minnesotans to apply for health insurance, including public health programs administered by the state, and private health insurance managed by private insurance companies.

PO Box 64253 ▪ St. Paul, MN 55164-0253 ▪ MNsure.org

MNsure
Where you choose health coverage

As written, the Proclamation categorizes approved coverage options that only provide very limited benefits, and in some cases allow exclusions based on preexisting conditions. This means that many individuals may not have access to insurance coverage or may end up with insufficient coverage and thus "underinsured," which could impose a substantial burden on Minnesota's healthcare system. Simply put, the Proclamation encourages underinsurance among newly arrived immigrants and potentially dissuades individuals and families who are eligible to receive tax credits from applying through MNsure.

Further, the Proclamation undermines the legislative intent of the Affordable Care Act. Specifically, Congress expressly intended to ensure that a minimum level of insurance coverage is available to all legal immigrants and citizens. However, under the Proclamation, several of the types of plans that qualify as approved coverage only provide very limited benefits and/or allow exclusions based on preexisting conditions. The Proclamation will reduce immigrants' access to the insurance coverage and health care they need, as anticipated by Congress when enacting the ACA. The Proclamation seems to disregard the fact that lawful permanent residents who meet the requirements set forth in Federal and State law are allowed to apply for coverage under the ACA, including those entering on immigrant visas.

In particular, MNsure is concerned that the Proclamation will discourage individuals and families from applying for comprehensive private program health care coverage altogether, as the proclamation excludes refundable tax credit benefits and assistance that Congress has specifically and explicitly stated immigrants in the United States are legally entitled to receive. Treating a tax credit that is intended to reduce the tax burden of individuals who purchase individual market insurance as a penalizable benefit undermines the intent of the ACA to improve insurance affordability.

We urge that you not implement a policy that will confuse and discourage consumers (including new immigrants) from applying for tax credits that enable them to purchase health insurance coverage. This policy would disempower our market and our consumers and could cause significant economic ripple effects for all Minnesotans if the uninsured rate increases. This policy will reduce access to comprehensive health care and put individuals' future health at risk.

For these reasons, we urge you to withdraw and reconsider this policy, and we request that reasonable time be provided for public analysis and comment on any subsequent related proposal.

Thank you for your consideration of our comment.

Sincerely,

Nate Clark
CEO

PO Box 64253 ▪ St. Paul, MN 55164-0253 ▪ MNsure.org

EXHIBIT 28

October 31, 2019

Via email: oira_submission@omb.eop.gov and PRA_BurdenComments@state.gov

Department of State Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, and Bureau of Consular Affairs, Office of Visa Services
Department of State

Docket Number: DOS-2019-0039

RE: Emergency Submission Comment on Immigrant Health Insurance Coverage (DS05541)

To whom it may concern,

The National Health Law Program (NHeLP) submits the following comments in response to the Notice of Request for OMB Emergency Review on Immigrant Health Insurance Coverage. NHeLP, founded in 1969, protects and advances the health rights of low-income and underserved individuals and families by advocating, educating, and litigating at the federal and state levels.

We vigorously oppose the proposal to collect information as set forth in the notice, the truncated process to solicit public comments, and the underlying October 4, 2019 Presidential Proclamation ("PP 9945") mandating visa applicants abroad to purchase health insurance coverage. There is no evidence of an emergency situation to warrant a 48-hour comment period, and there is certainly no evidence that mandating insurance coverage of individuals applying for immigrant visas will address the nation's growing number of uninsured individuals.

The Proclamation is not about improving access to health care or making sure hospitals and health care providers are paid. Instead, it serves as yet another constraint on legal immigration, imposing a wealth test that will disproportionately harm people of color, particularly those

with low incomes.

The Proclamation seeks to revive the arbitrary, unlawful multi-factor public charge test, by converting it to a single-factor test for immigrants abroad that evaluates one's ability to obtain health insurance or pay for foreseeable medical care. Just as the public charge rule, it seeks to overturn a century of immigration law. However, this time it is done through presidential fiat.

We believe the Proclamation puts the health of communities, families, and individuals at risk because it will force people to buy costly health insurance that likely provides less comprehensive coverage instead of more affordable plans that cover a robust set of services for which they are eligible. The purported goal of the Proclamation is to decrease the cost of uncompensated care in the U.S., yet the Proclamation excludes many of the options that have been shown to reduce uncompensated care costs, such as Medicaid coverage for adults and subsidized qualified health plans offered through the marketplace.[1] Instead, the Proclamation recognizes short-term plans, which do not comply with the Affordable Care Act's consumer protections, to qualify as "acceptable" coverage. Frequently referred to as "junk plans," short-term plans lack comprehensive coverage and can be prohibitively expensive for individuals with pre-existing conditions and people with disabilities. Furthermore, short-term plans routinely exclude coverage of important categories of services, such as maternity care, prescription drugs, and mental health services, leaving individuals without the ability to pay, and resulting in uncompensated care for providers and ultimately higher costs for the federal government.[2] In fact, because of the financial harms associated with expanding access

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[1] *See, e.g.*, Craig Palosky, Kaiser Family Found., *A Comprehensive Review of Research Finds That the ACA Medicaid Expansion Has Reduced the Uninsured Rate and Uncompensated Care Costs in Expansion States, While Increasing Affordability and Access to Care and Producing State Budget Savings* (Aug. 15, 2019), https://www.kff.org/medicaid/press-release/a-comprehensive-review-of-research-finds-that-the-aca-medicaid-expansion-has-reduced-the-uninsured-rate-and-uncompensated-care-costs-in-expansion-states-while-increasing-affordability-and-access-to-c/; Larisa Antonisse et al., Kaiser Family Found., *The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review* (Aug. 15, 2019), https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-august-2019/; Jessica Schubel & Matt Broaddus, Ctr. on Budget & Policy Priorities, *Uncompensated Care Costs Fell in Nearly Every State as ACA's Major Coverage Provisions Took Effect* (May 23, 2018), https://www.cbpp.org/research/health/uncompensated-care-costs-fell-in-nearly-every-state-as-acas-major-coverage.

[2] *See, e.g.*, Linda J. Blumberg et al. Urban Inst., *Updated: The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending* (Mar. 2018), https://www.urban.org/sites/default/files/publication/96781/2001727_updated_finalized.pdf; Karen Politz et al., Kaiser Family Found., *Understanding Short-Term Limited Duration Health Insurance* (Apr. 23, 2018), https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/; Laura Ungar, NPR, *A Woman's Grief Led To A Mental Health Crisis And A $21,634 Hospital Bill* (Oct. 31, 2019), https://www.npr.org/sections/health-

to short-term plans, some states have banned all or most short-term plans and twenty-two states limit the initial duration of a short-term plan to less than 12 months.[3] The Proclamation is simply creating an unnecessary barrier to comprehensive health coverage and will increase uncompensated care costs for providers, when patients cannot afford needed health care services that are not covered by these junk plans.

Moreover, this policy is slated to take effect just days after the ACA's marketplace open enrollment period starts in most of the country. As a result, it is likely to create additional fear and confusion among families that include immigrants and may prevent some from enrolling out of fear that enrolling in subsidized Marketplace plans will negatively impact their families' immigration goals. As a result, the proclamation will raise uninsured rates among lawfully present immigrants and potentially their U.S. citizen family members. That, in turn, will increase uncompensated care costs, exacerbating the very problem the proclamation purports to address.

In the public notice, the Department of State (Department) seeks approval to verbally ask immigrant visa applicants covered by PP 9945 whether they will have health insurance coverage within 30 days of entry to the U.S., or the financial resources to pay for reasonably foreseeable medical expenses. Individuals who cannot fulfill this requirement will be denied entry into the U.S. While the Department does not seek documentation or completion of a written form to collect this information, the requirement will nonetheless create an unnecessary burden on visa applicants who must navigate an already burdensome and costly filing and application process. Visa applicants will be required to have an understanding of the U.S. health insurance system, research and select a specific health insurance plan, enroll in coverage, and know the specific date coverage will begin—all from outside of the U.S. Moreover, the Department's proposed methodology for consular officers to ask for applicants to identify "such other information related to the insurance plan as the consular officer deems necessary" means that the type of information asked and collected will likely vary from consular officer to consular office, and be inconsistently applied across the consular offices. This inconsistency will increase confusion over the requirements and will likely create inequities in approval and processing among visa applicants.

This inconsistency will be further exacerbated by the fact that the Department of State and consular officers lack expertise in evaluating different types of health insurance

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shots/2019/10/31/771397503/a-womans-grief-led-to-a-mental-health-crisis-and-a-21-634-hospital-bill; American Cancer Society Cancer Action Network, *Inadequate Coverage: An ACS CAN Examination of Short-Term Health Plans* (May 13, 2019), https://www.fightcancer.org/sites/default/files/ACS%20CAN%20Short%20Term%20Paper%20FINAL.pdf.

[3] *See* Dania Palanker et al., Commonwealth Fund., *States Step Up to Protect Insurance Markets and Consumers from Short-Term Health Plans* (May 2, 2019), https://www.commonwealthfund.org/publications/issue-briefs/2019/may/states-step-up-protect-markets-consumers-short-term-plans.

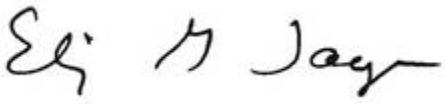
coverage. Consular officers will not know what information is reasonable to request from a health insurance plan or how to evaluate the information that is given. In fact, because of the lack of regulation on short-term plans, and the way those plans are marketed, it is often difficult for consumers to distinguish between short term and ACA-compliant plans.[4] Consular officers, who are not health insurance experts, may likewise mistake short-term plans for Marketplace plans, resulting in erroneous and arbitrary denials of visas.

In conclusion, NHeLP opposes the Proclamation in its entirety, and the information collection request on health insurance status as proposed in this notice.

We have included numerous citations to supporting research, including direct links to the research. We direct the Department to each of the studies we have cited and made available through active links, and we request that the full text of each of the studies cited, along with the full text of our comment, be considered part of the formal administrative record for purposes of the Administrative Procedure Act.

Please contact Priscilla Huang (huang@healthlaw.org) or Sarah Grusin (grusin@healthlaw.org) if you need any additional information.

Sincerely,



Elizabeth Taylor,
Executive Director

[4] *See, e.g.*, Sabrina Corlette et al., Urban Inst., The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses (Jan. 2019), https://www.urban.org/sites/default/files/publication/99708/moni_stldi_final_0.pdf; Nat'l Ass'n of Insurance Comm'rs, Report on Testing Consumer Understanding of a Short-Term Health Plan (April 2019), https://healthyfuturega.org/wp-content/uploads/2019/04/Consumer-Testing-Report_NAIC-Consumer-Reps.pdf.

EXHIBIT 29

NATIONAL IMMIGRATION LAW CENTER

October 31, 2019

To: Office of Management and Budget, State Desk Officer in the Office of Information and Regulatory Affairs
The Department of State's Bureau of Consular Affairs, Office of Visa Services

Re: Public Notice: 10934. Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage (Docket Number: DOS–2019–0039)

To whom it may concern:

The National Immigration Law Center (NILC) is responding to the notice of information collection referenced above, to express our serious concerns about the "Immigrant Health Insurance Questionnaire" (DS-5541) and its underlying policy. NILC opposes the proposed form for collecting information on immigrant health insurance, the Presidential Proclamation that prompted its issuance, and the emergency PRA review used to seek clearance.

Founded in 1979, NILC is the leading advocacy organization in the U.S. exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. We focus on issues that promote the well-being and economic security of immigrants and their families: health care and safety net programs; education and training; workers' rights; and federal and state policies affecting immigrants. To advance our mission, we use three integrated strategies: litigation, state and federal policy advocacy, and strategic communications.

For nearly four decades, NILC has been at the forefront of many of the country's greatest challenges in addressing immigration issues. NILC is a leading organization in the immigrant justice movement, playing a central role in shaping policy—including at the state and local level—and in initiating creative litigation strategies that expand opportunities for immigrant families with low incomes.

Both the process and the underlying requirement contemplated by the DS-5541 are unworkable. If implemented, they will require consular staff to conduct reviews that are outside the scope of their expertise. They will impose new burdens on U.S residents who seek to remain with or reunite with their family members, and on individuals who are otherwise eligible to immigrate to this country.

Form DS-5541

The DS-5541 is intended to implement Presidential Proclamation 9945 (the Proclamation), which requires that persons immigrating to the U.S. be covered by 'approved' health insurance within 30 days of their arrival in this country, unless they have the resources to pay for 'reasonably foreseeable' medical costs. Certain categories of persons are exempt from this requirement, including returning lawful permanent residents, persons with Special Immigrant Visas, refugees, and children under 18 unless entering with an immigrating parent. Parents of adult U.S. citizens (persons seeking IR-5 visas)

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202 216-0266 fax

must be able to show that their health care would not impose a substantial burden on the U.S. health care system. The information required on the DS-5541 is intended to be presented in an oral interview format.

The DS-5541 is wholly insufficient to implement this problematic policy. It provides no information about how the consular officer is to determine whether the person being interviewed is subject to its scope. For example, it fails to explain the standards or process for determining that an IR-5 visa applicant's health care costs won't 'impose a substantial burden' on the U.S. health care system. The form fails to communicate what types of health insurance satisfy the Proclamation's requirements and leaves unclear whether the oral interview will be the first time an intending immigrant learns about this new obligation. In addition, it provides no information about the evidence an applicant needs to present.

Moreover, the proposed implementation of the information collection as an oral interview presents the risk of inconsistent questioning and inequitable outcomes, with no formal collection of information to be preserved for later review. No standards are provided to determine the applicant's ability or intention to purchase medical insurance within 30 days of admission.

The Proclamation

In addition to our concerns about the information collection process, we strongly object to the underlying policy created by the Proclamation.

The stated reason for the Proclamation is a pretense for adopting another policy that would restrict immigration. The Proclamation pretends to suspend the entry of persons whom the President finds detrimental to the interests of the U.S., by denying immigrant visas to individuals whose entry would "financially burden the U.S. healthcare system." In support of this claim, the Proclamation asserts, without reference to research, that care provided to the uninsured results in uncompensated care costs that are passed on to "the American people" as higher taxes, higher premiums and higher fees for medical services. The Proclamation further asserts, without providing a source, that the health care system's problems with uncompensated care are exacerbated by the admission of persons who have not demonstrated the ability to pay for their health care costs.

The Proclamation's stated rationale ignores the fact that a small fraction of the U.S. uninsured population is comprised of immigrants, as well as the reasons that immigrants are uninsured at higher rates than U.S. Citizens. Of the 27.4 million nonelderly persons without insurance in the U.S., only about 15% are lawfully present immigrants.[1] The vast majority are U.S. citizens. Immigrants are more likely to be uninsured because of policy choices, including restrictive eligibility rules in public programs, and policies, such as public charge, that discourage eligible immigrants from participating in programs for which they are eligible.[2]

The Proclamation's claims about the effects of uninsured immigrants are likewise suspect. When people without insurance seek health care, they are generally billed for services and are often asked to pay before receiving treatment for non-emergency conditions. Moreover, public and private programs often offset the costs of uncompensated care, and there is limited evidence that uncompensated care causes hospitals to charge higher prices to others. In fact, immigrants benefit the health care system. They are generally younger and healthier and use less health care than the U.S. population as a whole,

[1] President Trump's Proclamation Suspending Entry for Immigrants without Health Coverage (Kaiser Family Foundation, October 10, 2019) https://www.kff.org/disparities-policy/fact-sheet/president-trumps-proclamation-suspending-entry-for-immigrants-without-health-coverage/
[2] Id.

pay more in health insurance premiums than they receive in benefits, and are net contributors to the Medicare trust fund.[3]

No explanation or justification is offered for the Proclamation's 30-day timeline, the designation of the insurance products that are 'approved' or the exclusion of Medicaid for adults and private insurance plans purchased with the subsidies created by the Affordable Care Act (ACA).

The Proclamation is unworkable by design. The U.S. health insurance market is so uniquely complex that the Centers for Medicare and Medicaid Services (CMS) spends millions of dollars each year for outreach, education, and enrollment assistance to help consumers enroll in coverage.[4] It is unreasonable to assume that people residing outside of the U.S. will understand the available options and choose a health insurance product.

Some applicants may be able to select a plan through the assistance of U.S.-resident relatives. However, consumers will rarely be able to enroll in health insurance coverage until they begin residing in the state in which they will obtain coverage. This means they are unlikely to have detailed information about the coverage at the time of their consular interview.

While the stated purpose of the Proclamation is to reduce uncompensated health care costs, it is more likely to reduce the number of people enrolled in comprehensive health insurance.

Congress intended that lawfully present immigrants, including recent entrants, with incomes under 400% of the Federal Poverty Line obtain comprehensive coverage through Medicaid or if ineligible, through ACA marketplace plans with premium tax credits. The Proclamation effectively puts those sources of coverage out of the reach of new immigrants, driving those without employer, family or TriCare coverage toward short-term or other substandard plans that may not cover needed medical services. If individuals opt for such a plan and get sick or injured, they will have trouble affording out-of-pocket expenses, and medical providers will carry the burden of uncompensated care.

Implementation of the Proclamation, which is slated to occur just days after the beginning of the ACA's open enrollment period, will add to the fear and confusion affecting immigrant and mixed-status families and discourage them from enrolling. U.S. residents may fear that enrolling in coverage with ACA premium tax credits or Medicaid will interfere with their families' immigration goals. As a result, the proclamation will raise uninsured rates among lawfully present immigrants and their U.S. citizen family members. This, in turn, will increase the need for uncompensated care, exacerbating the very problem the proclamation purports to address.[5]

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[3] Lila Flavin, Leah Zallman, Danny McCormick, and J. Wesley Boyd, Medical Expenditures on and by Immigrant Populations in the United States: A Systematic Review, (Boston, MA: Tufts University School of Medicine, 2018), https://doi.org/10.1177%2F0020731418791963; Leah Zallman, Steffie Woolhandler, Sharon Touw, David U. Himmelstein, and Karen E. Finnegan, Immigrants Pay More In Private Insurance Premiums Than They Receive In Benefits (Health Affairs, October, 2018) https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2018.0309, Leah Zallman, Steffie Woolhandler, David Himmelstein, David Bor, and Danny McCormick, Immigrants Contributed An Estimated $115.2 Billion More To The Medicare Trust Fund Than They Took Out In 2002–09, https://www.healthaffairs.org/doi/10.1377/hlthaff.2012.1223

[4] Katie Keith, CMS To Maintain Navigator Funding At $10 Million For 2020, 2021 (Health Affairs, May 29, 2019) https://www.healthaffairs.org/do/10.1377/hblog20190529.659554/full/, New Call for Applications: $ 6 Million Available to Help Increase Enrollment of American Indian and Alaska Native Children in Medicaid and CHIP, InsureKidsNow.Gov, https://www.insurekidsnow.gov/campaign/funding-opportunity/index.html

[5] Brief of Amici Curiae, City and County of San Francisco and County of Santa Clara v. U.S. Citizenship and Immigration Services, et al., No. 4:19-CV-04717, https://www.aha.org/system/files/media/file/2019/09/amici-curiae-brief-of-aha-hospital-groups-on-dhs-public-charge-rule-9-11-1019.pdf

Emergency Review Process

OMB has not provided a satisfactory explanation for its publication of the information collection notice with a 48-hour comment period. Emergency approvals are to be used in very limited circumstances where the standard Paperwork Reduction Act (PRA) period would result in public harm or cause the agency to miss a court date or statutory deadline. There is no law that requires implementation of the Proclamation by November 3, and there is no basis for believing that any problems resulting from the presence of uninsured immigrants will be exacerbated during a standard PRA clearance process.

Taking adequate time to develop, seek comments on, and evaluate an estimate of the burdens of the information collection will not cause any significant harm, much less a harm so great as to necessitate the emergency approval of this information collection instrument. As the Department's notice points out, the Proclamation only provides that the Secretary of State "may" establish standards to implement this policy; it imposes no deadline on the establishment of those standards. The Department should do so in a thoughtful and transparent manner, soliciting public comment in the usual manner for a period sufficient to draw useful information from the public.

Evaluate whether the proposed information collection is necessary for the proper functions of the Department:

The information collection implements a policy that creates a new health insurance mandate for certain individuals seeking to immigrate to the United States. This is not necessary for the proper functioning of the Department.

The Department has no expertise in implementing a health insurance mandate and the mandate serves no purpose that furthers the objectives of the Department. Design and implementation of mandates to obtain health insurance is extremely complicated, as evidenced by the extensive deliberations and rule-making the Department of the Treasury, the Department of Health and Human Services, and other agencies undertook over several years to implement the Affordable Care Act. The Department lacks the expertise that those agencies relied upon and certainly cannot design a workable mandate without a meaningful opportunity for public comment.

Evaluate the accuracy of our estimate of the time and cost burden of this proposed collection, including the validity of the methodology and assumptions used.

The estimate of ten minutes per response is highly implausible. First, the fact that the questions will be asked in an oral interview will inevitably lead to questions from applicants, prolonging the interview process. Second, if applicants know about the Proclamation's requirements in advance, the ten-minute estimate fails to account for the time they will need to spend learning about the complex U.S. insurance market, researching the availability of health insurance products that can be purchased from outside the country (if any) and selecting a product.

The ten-minute estimate is particularly problematic in the case of applicants who plan to rely on their own resources. These individuals and consular officers would need to understand their health status, the treatment protocols accepted in the U.S. for their health conditions and the costs of those treatments. Because different providers have very different rates, applicants may need to "shop" for providers long-distance to obtain rate information that will allow them to qualify. In a country in which

'surprise medical bills' resonates as a political issue, it's hard to imagine how anyone outside the U.S. could estimate the cost of receiving treatment here accurately.[6]

How the Department can enhance the quality, utility, and clarity of the information to be collected.

The Department can enhance the quality, utility, and clarity of the information to be collected by limiting the request to information readily known by the prospective immigrant. In most cases, prospective immigrants know only whether they intend to seek health insurance coverage upon arrival in the U.S. or, if not, whether they have a given level of financial resources. The Department should limit its information collection request to those facts alone.

Conclusion

NILC strongly opposes the proposed information collection and the proclamation on which it is based. We respectfully request that the information collection be withdrawn.

Please contact me if additional information is required. I can be reached by email at lessard@nilc.org.

Respectfully,

Gabrielle Lessard
Senior Policy Attorney

[6] Emmarie Huetteman, Legislation To End Surprise Medical Bills Has High Public Support — In Both Parties (Kaiser Health News, Sept. 119, 2019) https://khn.org/news/legislation-to-end-surprise-medical-bills-has-high-public-support-in-both-parties/

EXHIBIT 30

Oregon
Kate Brown, Governor

Department of Consumer and Business Services
Oregon Health Insurance Marketplace
350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405
855-268-3767
Fax: 503-315-9144
oregonhealthcare.gov

October 31, 2019

Submitted Electronically Only (www.regulations.gov)
Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB)
Department of State's Bureau of Consular Affairs, Office of Visa Services.

Re: Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage; Docket Number: DOS-2019-0039; DN: 2019-23639;

To Whom It May Concern:

I write this letter on behalf of the Oregon Health Insurance Marketplace (Marketplace) to comment on the Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage published in the Federal Register on Oct. 30, 2019.

The Marketplace helps Oregonians get coverage when they are not eligible for the Oregon Health Plan and don't get health insurance through their job or another program. It is a state-based marketplace using the federal platform (SBM-FP) authorized under state law and the Affordable Care Act (ACA). The Marketplace is tasked to ensure Oregonians have equitable access to high-quality, affordable health coverage and to promote universal health coverage in the state. Today, the Marketplace covers more than 148,000 Oregonians.

You requested comments to permit the Department of State to:

(1) Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

(2) Evaluate the accuracy of our estimate of the time and cost burden of this proposed collection, including the validity of the methodology and assumptions used.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(4) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

The Department of State, through its consular officers proposes to "verbally ask immigrant visa applicants covered by [Presidential Proclamation 9945 (]PP 9945[)] whether they will be covered by health insurance in the United States within 30 days of entry to the United States and, if so, for details relating to such insurance." "If applicants answer affirmatively, consular officers will ask for applicants to identify the specific health insurance plan, the date coverage will begin, and such other information related to the insurance plan as the consular officer deems necessary."

The information requested is not necessary for the "proper functions of the Department." The Department could certainly function, as it has for decades, without requesting or receiving the indicated information.

The State of Oregon opposes the Department of State's overbroad and vague grant of authority to consular officers to ask "such other information related to the insurance plan as the consular officer deems necessary." The grant fails to create a single standard for all similarly situated individuals, which will result in similarly situated immigrants treated differently based on the whims of a consular officer. The grant also presumes a level of expertise in identifying the types of health insurance coverage named in PP 9945 that would be unreasonable to expect from a consular official.

The State of Oregon agrees that a verbal ask for the name of the insurance plan and the date coverage is to begin is reasonable and poses a minimal burden on an immigrant. However, we cannot say the same for the request of "such other information related to the insurance plan as the consular officer deems necessary." Depending on what information the consular officer believes is necessary, the information requested could be burdensome and could result in the erroneous denial of a visa. The State of Oregon urges the government to limit the request to the name of the insurance plan and date of coverage so that all similarly situated people are afforded the same protection and benefit under the law.

The Marketplace supports the verbal ask and receipt of information as an appropriate and minimally burdensome method for obtaining the information. While the method of collecting the information is certainly reasonable, the underlying policy basis for requesting the information is not. It is unreasonable for PP 9945 to impose an individual mandate to purchase health insurance coverage on new immigrants when neither Congress nor this administration supports an individual mandate on citizens and existing immigrants.

PP 9945 creates a catch-22 situation: Under existing federal law, immigrants cannot access insurance through Marketplaces without verifying residency and lawful presence through a strict eligibility process this federal administration has championed. Yet, under PP 9945, those seeking to establish residency and lawful presence through proper immigration channels cannot do so without verifying insurance status. As a result, people who otherwise could become lawfully present immigrants and qualify for health insurance under federal law will be barred from both aims. This paradox is contrary to federal law and illogical in its practical result.

The United States is a country of immigrants. In recognition of this fact, Congress has created laws that benefit immigrants. The ACA is, in part, one such law. The ACA allows legally present immigrants to benefit from premium tax credits. PP 9945 negates this part of the ACA by denying entrance to the United States to immigrants based on their legal and legitimate right to premium tax credits.

PP 9945 shows disregard for the economic and health benefits of ensuring access to health insurance coverage for all immigrant residents, including the working poor who are still in progress on the path to economic security.

Because immigrants will not be able to seek health insurance through marketplaces, PP 9945 undermines the health of Oregon's insurance market, potentially affecting coverage for immigrants and nonimmigrants alike.

Beyond the immediate harms to lawfully present immigrants being barred from accessing insurance through marketplaces such as HealthCare.gov, the proclamation undermines our commercial insurance market by seeking to excise lawfully present immigrants from the coverage to which they are legally entitled. Lawfully present immigrants in Oregon are more likely to represent "favorable" insurance risk, because they are often younger, healthier, or lower-than-average users of health care services when compared to the general insured population. Several studies have concluded that immigrants are net contributors to both private coverage and Medicare, paying more in insurance premiums than they receive in benefits.

Of further concern, the proclamation seeks to permit Short-Term Limited-Duration Plan (STLDP) coverage to qualify as "acceptable" coverage. This type of coverage does not comply with the Affordable Care Act's consumer protections, nor those codified in Oregon's insurance code. Such plans have been widely demonstrated to lack critical comprehensive coverage and can be prohibitively expensive for people with pre-existing conditions. Qualified legal immigrants' health and financial well-being are threatened when they are diverted from meaningful, comprehensive coverage to which they are legally entitled and instead directed towards companies that engage in medical underwriting, spend the majority of premium revenue on nonmedical expenses, and are known to exclude core benefits such as maternity, mental health, and substance use disorder treatment. This will also lead to people with such coverage, winding up with unpaid medical bills, placing undue financial burden on the state's hospital system.

Finally, we strongly object to the two-day comment period afforded to the public on this proposal, which will profoundly affect our immigration and health care systems. Two days is wholly inadequate to allow for the sufficient public consideration that a policy of this significance merits, and this policy in no way constitutes an emergency.

Therefore, we urge you to withdraw and reconsider this policy, and we request that reasonable time be provided for public analysis and comment on any subsequent related proposal.

Chiqui Flowers
Administrator
Oregon Health Insurance Marketplace
Department of Consumer and Business Services
State of Oregon